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NICCOLÒ MACHIAVELLI, THE BARON DE MONTESQUIEU AND THE DESTABILIZING EFFECTS OF INTERNATIONAL MIGRATION

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Abstract

This essay demonstrates that, although modern liberals incessantly promote the EU as a living exemplar for the virtues of contemporary liberalism and basic, unrestrictive, migration policies, the experiences of innumerable contemporary EU states, such as France, contradict these spurious claims, since, instead of becoming enriched or improved, countless EU states have deteriorated and become fraught with social conflict, insecurity, and instability, as a result of their minimally restrictive, liberal, migration policies and consequent penetration with foreign, inherently contradictory ideology. Furthermore, this essay demonstrates that, despite the ignorant exclamations of modern liberals, the inviolable patriarch of liberalism, the Baron de Montesquieu, in addition to the pre-eminent, indispensable, paterfamilias of realism, Niccolò Machiavelli, explicitly confirm that, if any state fails to adequately restrict the migration of people and ideas across its borders, then that state will inevitably become penetrated by a foreign, inherently contradictory, ideology, and, consequently, eviscerated by an unrelenting insecurity.

Key words: Denmark; European Union; France; Machiavelli; Migration; Montesquieu; Security

GLOBALIZATION, MIGRATION AND NATIONAL SECURITY

Unquestionably, the advent of globalization has dramatically transformed innumerable aspects of the modern international political system, as well as severely disturbed the bloated dogma of elder political theory. Yet, although the process of globalization has certainly meted out multitudinous, diverse, and consequential reforms within the modern international political system, it is evident that several of globalization's most transformative modifications have been wrought specifically vis a vis the phenomenon of international migration, since the onset of globalization within the international political system has tremendously facilitated and encouraged the migration of people, ideas, and goods between states (Woods 2008, 252).

Via its fundamental processes, globalization has emphatically eliminated countless archaic impediments to international migration, such as institutional barriers and tariffs, for example (Woods 2008, 252). Consequently, international migration has become superfluous within the modern international political system and numerous contemporary states have become enamored of the benefits that can, potentially, accompany the migration of people, goods, and ideas within the international political system. As a result, a plethora of modern states have modified and liberalized their political policies, in order to allow people, ideas, and goods to migrate across their borders with ease. For example, throughout the latter half of the twentieth century, various European states combined themselves into the European Union (EU): an amorphous entity, that is at once supranational, as well as intergovernmental, and wherein any person who possesses EU citizenship, as well as a valid EU passport, resultantly possesses the ability to freely migrate from any EU state to another (Your Europe 2015).

As the unrelenting onset of globalization has continued to enable and encourage international migration within the modern political system, myriad states and political pundits have become captivated by the superficial benefits[1] that can sometimes accompany the migration of people and ideas. Therefore, a minimally restricted international migration of peoples and ideas throughout the international political system has become the subject of persistent praise and arduous promotion throughout the modern era (Baylis 2008, 8). For instance, countless modern liberal theorists, such as Chandran Kukathas, argue that the unfettered migration of people, goods, and ideas between states is invariably a beneficial process, because it subjects states and their people to diverse strains of cross-cultural discourse, which, in turn, inevitably causes states to progress, improve, and become enriched culturally, as well as politically (Kukathas 2005, 215).

However, although an inordinate number of contemporary liberal political actors and pundits fervently promote minimally restrictive migration policies and enthusiastically proclaim the migration of people and ideas between states as a quintessentially beneficial process, their pronouncements are utterly misled and unequivocally inaccurate. Rather, despite the romantic edicts of modern liberalism, the experiences and the histories of innumerable nations resoundingly demonstrate that, if any state fails to adequately restrict and effectively regulate the international migration of people and ideas across its borders, then that state will incontrovertibly become destabilized, and its national security irrevocably shattered, due to the fact that the state's minimally restrictive, inadequate, migration policies will inevitably cause the state to become penetrated by a foreign ideology that inherently contradicts the state's own respective foundational political ideology and values.

If a state is penetrated by an ideology that inherently contradicts its own respective foundational political ideology, then, when the inherently contradictory ideology struggles for political expression within the state, the inherently contradictory ideology and its adherents comprehensively reject the state, as well as the legitimate channels for political expression within the state, due to the fact that the state, along with its essential political institutions, structures, and laws, is predicated upon a fundamental political ethos, norms, and values that the inherently contradictory ideology and its adherents explicitly repudiate. Subsequently, when the inherently contradictory ideology and its adherents pursue political

[1] Economic productivity and ideological diversity, for example.

expression and accommodation within the state, they struggle violently against the state, without a modicum of respect for the state's essential laws or the rights of the state's citizenry, which causes the state's citizenry[2] to become reciprocally violent and hostile in turn, since their security has been demonstrably threatened via this flagrant violation and disregard of the state, its constitutive laws, and its fundamental political order. As a result, the state and its society degenerate into a condition that distinctly emulates the hostile, Hobbesian state of nature, and, consequently, overwhelming insecurity and instability permeate throughout the state.

Moreover, if a state is penetrated by an ideology that inherently contradicts its own respective foundational political ideology, then, when the state attempts to accommodate the inherently contradictory ideology within its socio-political fabric, the state is inevitably forced to abandon its fundamental political ethos, norms, and values, as well as its essential political apparatus and laws, since the state attempts to express a political ideology which categorically controverts and repudiates as invalid the constitutive principles of the state's society and its political structure as a whole. Consequently, the state inexorably deviates from the political trajectory and the constitution that previously engendered its success and prosperity within the international political system, as well as allowed it to secure itself against the omnipresent, eternal, rigors of fortuna.[3] Therefore, the state becomes destabilized, fraught with insecurity, and inevitably collapses into a nigh inescapable, degenerative cycle, which terminates, necessarily, with the manifestation of anarchic conditions within the state, and, summarily, the state's precipitous collapse.

In fact, although modern liberals incessantly promote the EU as a living exemplar for the virtues of contemporary liberalism and basic, unrestrictive, migration policies, the experiences and the histories of innumerable contemporary EU states contradict these spurious claims. Truthfully, when various EU states, such as France or Denmark, are analyzed, the experiences of these despondent, woe-begotten nations clearly confirm that, instead of becoming enriched or improved, the states of the EU have actually deteriorated and become fraught with rampant social conflict, insecurity, and instability, as a result of their minimally restrictive, liberal, migration policies and consequent penetration with foreign, inherently contradictory ideology.

Furthermore, despite the ignorant, contrantarian[4], exclamations of modern liberals and their incessant promotion of an unrestricted migration of people, goods, and ideas between states, the foundational and inviolable documents of liberal political thought, in addition to the pre-eminent, indispensable elucidations of realism, unequivocally confirm that, if any state fails to adequately restrict the migration of people and ideas across its borders, then that state will inevitably become penetrated by a foreign, inherently contradictory, ideology, and, as a result, eviscerated by an unrelenting insecurity. For example, in one of the obligatory articulations of liberal political theory, *Considerations on the Causes of the Greatness of the Romans and Their Decline,* the seminal architect of

[2] Specifically, those citizens who reject the newly introduced, inherently contradictory, ideology.
[3] "I liken her to one of these violent rivers which, when they become enraged, flood the plains, ruin the trees and the buildings, lift earth from this part, drop in another; each person flees before them, everyone yields to their impetus without being able to hinder them in nay regard."
Niccolò Machiavelli, *The Prince*, trans. Harvey C. Mansfield (Chicago: University of Chicago Press, 1998), 98.
[4] 'Contrantarianism' is a redoubtable form of sophistry, whereby an individual opposes the beliefs of others simply for the sake of opposition and wanton oppression.

liberal political thought, Charles-Louis de Secondat, Baron de La Brède et de Montesquieu, incontrovertibly declares that the migration of a foreign, inherently contradictory, ideology within a state is inevitably and profoundly destabilizing; in addition, the Baron de Montesquieu specifically cites the penetration of foreign, inherently contradictory, ideology into the Roman state as the underlying cause for the ancient Roman Empire's unceremonious decline and virulent collapse. Moreover, in one of the quintessential expositions of realist political theory, *Discourses on Livy*, the primogenitor of realism, Niccolò Machiavelli, argues that, if a state is injected with a foreign, inherently contradictory, ideology, then its political constitution and national security will ineluctably become compromised, and, consequently, the state will unerringly implode into a degenerative cycle of anarchy and insecurity, if it is not expediently reoriented according to its original, foundational political ideology and values.

Therefore, it is readily apparent that, in spite of the idealistic, enchanting, and endearing entreaties of modern liberalism, if any state adopts minimal, meagerly restrictive, migration policies and fails to appropriately restrict the migration of people and ideas throughout its society, then that state will certainly become destabilized, and its national security irrevocably shattered, due to the fact that the state's ineffective and unrestrictive migration policies will inevitably cause the state to become brutally penetrated by a foreign ideology that inherently contradicts the state's own respective foundational political ideology and fundamentally repudiates its essential political structure.

IMMIGRATION, IDEOLOGY AND INSTABILITY

Throughout the course of human history, international migration has consistently exerted an undeniable influence within the international political system. For example, the international migration of people has unerringly caused the populations, and thereby the productive capacities, of countless states to ebb and flow in response to the demands of various international socio-economic factors (Doty 2009, 171). Truthfully, the consequences that are produced via the international migration of people, goods, and ideas within the international political system are not comprehensively negative, and, if states do appropriately accommodate international migration within their borders, then they can achieve certain potential benefits. Even Niccolò Machiavelli, a revered and renowned realist who speaks emphatically of the dangers that faithfully accompany any unregulated migration of people and ideas, readily acknowledges that, when international migration is adequately regulated, it produces undeniably positive effects within any nation or state. For instance, in his revered work, *Discourses on Livy*, Machiavelli states that:

> those who plan for a city to make a great empire should contrive with all industry to make it full of inhabitants, for without this abundance of men one will never succeed in making a city great. This is done in two modes: by love and by force. By love through keeping the ways open and secure for foreigners who plan to come to inhabit it so that everyone may inhabit it willingly; by force through undoing the neighboring cities and sending their inhabitants to inhabit your city (Machiavelli 1996, 134-135).

Yet, in spite of the advantages that states can certainly accrue if they appropriately accommodate the international migration of people, goods, and ideas within their borders,

the histories of innumerable failed empires unequivocally demonstrate that international migration is by no means a necessarily beneficial phenomenon. Rather, the experiences of countless nations, ancient and modern alike, inexorably confirm that, if any state fails to adequately restrict and effectively regulate the international migration of people and ideas across its borders, then that state will incontrovertibly become destabilized, and its national security irrevocably shattered, due to the fact that the state's minimally restrictive migration policies will inevitably cause the state to become penetrated by a foreign ideology that inherently contradicts the state's own respective foundational political ideology. In fact, although modern liberals relentlessly promote the EU as an indisputable proof for the virtues of minimal, unrestrictive, migration policies, the experiences of innumerable contemporary EU states contradict these spurious claims. For example, when the experiences of various EU states, such as France or Denmark, are analyzed, the experiences of these unfortunate nations emphatically confirm that, instead of becoming enriched or improved, the states of the EU have actually deteriorated and become fraught with rampant social conflict and insecurity, as a result of their inadequately restrictive, liberal, migration policies, and consequent penetration with foreign, inherently contradictory, ideology.

Firstly, if a state is penetrated by an ideology that inherently contradicts its own respective foundational political ideology, then, when the inherently contradictory ideology struggles for political expression within the state, the inherently contradictory ideology and its adherents comprehensively reject the state, as well as the legitimate channels for political expression within the state, due to the fact that the state, along with its essential political institutions, structures, and laws, is predicated upon a fundamental political ethos, norms, and values that the inherently contradictory ideology and its adherents explicitly repudiate. Subsequently, when the inherently contradictory ideology and its adherents pursue political expression and accommodation within the state, they struggle violently against the state, without a modicum of respect for the state's obligatory laws or the rights of the state's citizenry, which causes the state's citizenry to become reciprocally violent and hostile in turn, since their security has been demonstrably threatened via this flagrant violation and disregard of the state, its constitutive laws, and its fundamental political order. As a result, the state and its society degenerate into a condition that eerily emulates the hostile, Hobbesian state of nature, and, consequently, overwhelming insecurity and instability permeate throughout the state.

When a state is penetrated by an ideology that inherently contradicts its own respective foundational political ideology and values, the newly introduced ideology initially behaves similarly to any other burgeoning ideology within the state: it begins to coalesce and attempts to express itself within the state's socio-political fabric. However, as the newly introduced, inherently contradictory, ideology endeavours to accommodate itself within the state, its comportment differs dramatically from the behavior that is typically exhibited by ideologies that are congruent with the state's foundational, constitutive, political ideology. Rather than attempting to pursue political accommodation and expression within the state via pacific and legitimate means, the inherently contradictory ideology and its adherents categorically controvert the state and its fundamental political apparatus, as well as the legitimate channels for political discourse and expression within the state, due to the fact that the state and its essential political institutions are predicated upon a political ideology, norms, and values that the inherently contradictory ideology and its adherents unequivocally repudiate. Consequently, the inherently contradictory ideology

and its adherents pursue political accommodation and expression within the state via violent and volatile means that flagrantly disregard the state, as well as its essential political structures, institutions, and laws.

Furthermore, since the inherently contradictory ideology and its adherents blatantly disregard the state and its fundamental political apparatus via their violent, volatile, quest for political expression and accommodation, the inherently contradictory ideology and its adherents inevitably violate the national security of the state, as well as the personal security of its populace. Therefore, the state's citizenry becomes terrorized, and, as a result, innumerable citizens who were once placid, pacific, members of society summarily become incited into a violent body within the state and abruptly abandon the Leviathan,[5] as well as its laws. Rather than search for security within the newly destabilized state and its social confines, these terrorized citizens instead endeavor to protect their own respective personal security via their own respective personal power, and with violence if necessary, against any potential attacks or insecurity; consequently, these citizens violently clash and conflict with the inherently contradictory ideology and its adherents. Subsequently, the whole of the state's citizenry is effectively plunged into a condition that distinctly resembles the hostile, Hobbesian state of nature, an anti-social condition wherein security, order, and the laws of the state do not exist,[6] and, as a result, the state is profoundly destabilized and devastated by an ineffable insecurity, which, unfortunately, remains consistently entrenched within the state until one of the discordant political ideologies is eliminated or excised from within the state and its society.

The inveterate experiences of innumerable EU nations comprehensively confirm the aforementioned assertions. For instance, if Denmark's experiences within the contemporary international political system are analyzed, then they incontrovertibly demonstrate that the Danish state has been plunged into an exigent insecurity, specifically as a result of its abhorrently inadequate migration policies and the violent, Hobbesian, disposition that these meager migration policies have ineludibly engendered within the Danish citizenry. During the modern era, Denmark has enthusiastically embraced overwhelmingly minimal and comprehensively liberal migration policies, and, consequently, people have been permitted to migrate throughout the Danish state without any significant impediment or restriction (Brochmann et al. 2012, 9). However, since Denmark has meagerly restricted and inadequately regulated the migration of people across its borders, even individuals and ideologies that inherently contradict and literally repudiate the foundational liberal-democratic political ideology, ethos, laws, and structures of the Danish state have been allowed to migrate within Danish society, despite the fact that these ideologies and their adherents fervently desire and, in fact, proactively endeavor, to collapse the Danish state

[5] Alternatively, 'the state', according to Hobbes.
Thomas Hobbes, *Leviathan*, ed. Edwin Curley (Indianapolis: Hackett Publishing Company, 1994).

[6] In the state of nature "…it is manifest that during the time men live without a common power to keep them all in awe, they are in that condition which is called war, and such a war is of every man against every man…Whatsoever therefore is consequent to a time of war, where every man is enemy to every man, the same is consequent to the time wherein men live without other security than what their own strength and their own invention shall furnish them withal. In such a condition there is…no society, and which is worst of all, continual fear and danger of violent death, and the life of man, solitary, poor, nasty, brutish, and short. In this state every person has a natural right or liberty to do anything one thinks necessary for preserving one's own life; and life is solitary, poor, nasty, brutish, and short." Thomas Hobbes, *Leviathan*, ed. Edwin Curley (Indianapolis: Hackett Publishing Company, 1994), 76.

and destroy its fundamental political apparatus, in order to erect in its stead a state and a society which reflects only their own fundamental political principles and beliefs.

Unsurprisingly, as a result of Denmark's abhorrently inadequate and minimally restrictive migration policies, the Danish state has been brutally penetrated by an ideology that inherently contradicts and literally repudiates virtually every aspect of Denmark's foundational liberal-democratic political ideology: orthodox Islamic ideology (Leiken 2005). Moreover, once orthodox Islamic ideology successfully infiltrated within the Danish state and entrenched itself within the Danish socio-political fabric, its adherents savagely attacked the Danish state and violently rejected Denmark's essential laws, as well as the legitimate channels for political expression and accommodation within the Danish state, due to the fact that the Danish state is predicated upon a distinctly liberal-democratic political ideology, as well as various quintessential liberal-democratic political principles, such as human autonomy, liberty, and freedom of speech or expression, that are categorically controverted and repudiated by orthodox Islamic ideology as *a priori* false and invalid (Dunne 2008, 115).

For instance, in December 2010, an ominous terrorist plot was perpetrated by five militant Islamic terrorists against the Danish state and Jyllands-Posten, a Danish newspaper, in order to exact revenge for cartoons of the prophet Muhammad that were published by Jyllands-Posten in 2005 (The Copenhagen Post 2012). Prior to their expedient arrest, the five Islamic terrorists endeavoured to imitate the 2008 terrorist attacks in Mumbai, wherein, over a period of four days, ten members of Lashkar-e-Taiba, an Islamic terrorist organization from Pakistan, executed a series of 12 coordinated attacks throughout the city of Mumbai, which ultimately killed 166 people and wounded over 600 others (Senguptanov 2008). Fortunately, however, a concerted and strenuous cooperative effort between Danish and Swedish security forces successfully apprehended the Danish terrorists before they were able to fully realize their awful ambitions and wreak absolute havoc within the Danish state (The Copenhagen Post 2012).

Furthermore, on February 14th, 2015, in an effort to eradicate Denmark's liberal-democratic political ideology and assert the supremacy of orthodox Islamic ideology within Danish society, Omar Abdel Hamid El-Hussein, a Danish citizen who was radicalized and converted into an adherent of orthodox Islamic ideology, definitively rejected the legitimate channels for political expression within the Danish state and violently attacked a debate in Copenhagen about free-speech that was hosted by the Swedish cartoonist Lars Vilks (Evans et al. 2015). During his initial attack, El-Hussein savagely murdered one Danish citizen and seriously wounded three Danish police officers, before fleeing from his crimes (Evans et al. 2015). Moreover, following his initial, despicable, actions, El-Hussein subsequently perpetrated another deplorable attack against the innocent citizens of Copenhagen, whereby he killed one Jewish citizen and wounded two Danish police officers near Copenhagen's main synagogue, before he was himself finally slain in northern Copenhagen by the Danish police (Evans et al. 2015).

As a result of the aforementioned attacks, in addition to innumerable other violations, the Danish state has been wracked with comprehensive violence, insecurity, and instability. Specifically, Denmark's national security, as well as the personal security of the Danish citizenry has been grievously threatened, and, consequently, the Danish citizenry has lost faith in the Danish state's ability to safeguard its security, which has caused numerous Danish citizens to pursue security via their own respective personal power, rather

than through the state and its laws. Subsequently, innumerable Danish citizens who once adhered to the pacific, liberal-democratic, laws of the Danish state, and therefore implicitly accepted the Danish state's foundational liberal-democratic political ideology, have rejected the Danish state, as well as its pacific, liberal-democratic laws; instead, these citizens have become overtly hostile and violent towards the adherents of Islamic ideology within Danish society.

For example, following El-Hussein's aforementioned attacks against the Danish state and its society, numerous Danish citizens started to eschew the legitimate channels for political expression within the Danish state, as well as the Danish state's liberal-democratic political structure. These Danish citizens, in an effort to assert their own political ideology and displace orthodox Islam from within Denmark's socio-political fabric, perpetrated various violent and hostile anti-Muslim attacks within the Danish state. For example, in 2015, various Danish citizens vandalized a Muslim cemetery in Odense, as well as its surrounding community, in retaliation for El-Hussein's previous terrorist attacks in Copenhagen (Kaplan 2015).

Consequently, it is indisputable that the introduction of orthodox Islamic ideology within Danish society, at the behest of Denmark's own minimally restrictive, abhorrently inadequate migration policies, no less, has caused a distinctly violent, virulent, and nationally destabilizing conflict to permeate throughout the Danish citizenry, whereby innumerable people within Danish society have been caused to reject the pacific laws and the liberal-democratic ideology of the Danish state, indeed the Danish state as a whole, and to, instead, attack each other with wanton venom and vigor, in order to protect their own personal security and assert their own political beliefs. Ergo, it is incontrovertibly evident that that the Danish state has been plunged into an exigent insecurity, specifically as a result of its grossly unrestrictive, deplorably insufficient migration policies and the violent, Hobbesian, disposition that these meager policies have engendered within the Danish citizenry.

Therefore, it is readily apparent, and the experiences of innumerable EU states in fact incontrovertibly confirm, that, if a state is penetrated by an ideology that inherently contradicts its own respective foundational political ideology, then, when the inherently contradictory ideology struggles for political expression and accommodation within the state, the inherently contradictory ideology and its adherents comprehensively reject the state, as well as the legitimate channels for political expression within the state, due to the fact that the state and its essential political apparatus are predicated upon a fundamental political ethos and values that the inherently contradictory ideology and its adherents literally repudiate. Subsequently, when the inherently contradictory ideology and its adherents pursue political expression and accommodation within the state, they struggle violently against the state, without a modicum of respect for the state's obligatory laws or the rights of the state's citizenry, which causes the state's citizenry to become reciprocally violent and hostile in turn, since their national and personal security has been demonstrably threatened via this flagrant violation and disregard of the state, its constitutive laws, and its fundamental political order. As a result, the state and its society degenerate into a condition that eerily emulates the hostile, Hobbesian state of nature, and, consequently, overwhelming insecurity and instability permeate throughout the state.

Moreover, if a state is penetrated by an ideology that inherently contradicts its own respective foundational political ideology, then, when the state attempts to accommodate

the inherently contradictory ideology within its socio-political fabric, the state is inevitably forced to abandon its fundamental political ethos and values, as well as its essential political apparatus and laws, since the state attempts to express a political ideology which categorically controverts and repudiates as invalid the constitutive principles of the state's society, as well as its political structure as a whole. Consequently, the state inexorably deviates from the political trajectory and the political constitution that previously engendered its success and prosperity within the international political system, as well as allowed it to secure itself against the omnipresent, eternal rigors of *fortuna*. Therefore, the state becomes destabilized, fraught with insecurity, and inevitably collapses into a nigh inescapable, degenerative cycle, which terminates, necessarily, with the manifestation of anarchic conditions within the state and, summarily, the state's precipitous collapse.

When an ideology migrates within a state, the veritable essence of the ideology, its constitutive principles, ethos, values, and norms, will inevitably and undeniably come to be expressed and accommodated within the state's social fabric. For example, if a novel ideology is introduced within a democratic state, then the newly introduced ideology, as well as its essential norms, values, principles, and beliefs, are all inevitably expressed and accommodated within the state and its society via the voting habits of the burgeoning ideology's adherents and the candidates that they elect. However, if a state is penetrated by an ideology that inherently contradicts the state's own respective foundational political ideology, then, when the state attempts to accommodate the newly introduced, inherently contradictory, ideology within its socio-political fabric, the state undergoes a tectonic and profoundly destabilizing change.

If a state is penetrated by an ideology that inherently contradicts the state's own respective foundational political ideology, then, when the state attempts to accommodate the newly introduced, inherently contradictory, ideology within its socio-political fabric the state is inexorably forced to discard various indispensable aspects of its fundamental political apparatus and to essentially alter its prototypical political constitution, due to the fact that the newly introduced, inherently contradictory, ideology is predicated upon political principles, values, beliefs and norms that unequivocally repudiate and climacterically controvert the constitutive political ethos and structure of the state. Subsequently, since the state is forced to emphatically abandon the obligatory rudiments of its political apparatus and irrevocably metamorphose its fundamental political constitution in order to accommodate the inherently contradictory ideology, the quintessential political structure of the state is essentially transformed, and the state consequently adopts political principles, practices, institutions, ideology, and policies that, due to their ineffective, incongruent, and injurious nature, were previously altogether alien and unfathomable within its pre-existing society. Moreover, since the state is forced to abandon the constitutive political principles, practices, policies, institutions and ideology of its society, the state is thereby precluded from pursuing the essential means and methods that heretofore allowed it to secure itself against the constant, lethal, rigors of *fortuna* and caused it to succeed within the inherently anarchic, violent, and volatile international political system. As a result, the state deviates from its proverbial 'good'[7] and abandons the

[7] "For all the beginning of sects, republics, and kingdoms must have some goodness in them, by means of which they may regain their first reputation and their first increase." Niccolò Machiavelli, *Discourses on Livy*, trans. Harvey C. Mansfield and Nathan Tarcov (Chicago: University of Chicago Press, 1996), 209.

fundamental political trajectory, as well as the essential political constitution, that previously engendered its success, security, and prosperity within the international political system. Therefore, the state becomes unequivocally destabilized, thoroughly fraught with insecurity, and inevitably implodes into a nigh-inescapable, degenerative, cycle, which terminates, necessarily, with the manifestation of anarchic conditions within the state and, summarily, the state's precipitous collapse, if the state is not immediately and expediently reoriented towards its quintessential, secure, political trajectory and constitution.

The miserable experiences of countless contemporary EU nations emphatically confirm the aforementioned assertions. For example, France's experiences within the modern international political system categorically demonstrate/confirm that the French state has become profoundly destabilized and rendered drastically insecure, specifically due to the fact that its liberal migration policies have caused it to become penetrated by a foreign, inherently contradictory ideology, and, as a result, France has been forced to radically deviate from the fundamental political trajectory and the elemental political constitution that previously permitted it to succeed and secure itself within the international political system. During the modern era, France has unabashedly embraced the absolutely unrestrictive and passionately liberal migration policies of the EU, and, consequently, people and ideas have been permitted to migrate throughout the French state without any appreciable impediment or barrier (Institute for Migration Research and Intercultural Studies 2007). However, since France has only meagerly and inadequately restricted the migration of people and ideas across its borders during the modern era, even people and ideologies that inherently contradict and unequivocally repudiate the foundational liberal-democratic political ideology, institutions, laws, and structure of the French state have been allowed to migrate within French society, despite the fact that these ideologies and their adherents passionately desire and, in fact, enthusiastically endeavour, to implode the French state and to eradicate its essential political apparatus, in order to erect in its stead a state which reiterates and reflects only their own fundamental political principles, norms, values, and beliefs.

Naturally therefore, as is wont to happen, the French state's abhorrently inadequate, minimally restrictive, and barely ethereal migration policies, have caused France to be ruthlessly penetrated by an ideology that inherently contradicts its own respective foundational liberal-democratic ideology and categorically spurns the whole of French society: orthodox Islamic ideology (Leiken 2005). Moreover, once orthodox Islamic ideology successfully infiltrated within the French state and entrenched itself within French society, it began to struggle for political expression within France and, unfortunately, the French state consequently attempted to accommodate the ideology and its dogma within its socio-political fabric. However, due to the fact that orthodox Islamic ideology inherently contradicts and literally controverts the foundational liberal-democratic political ethos and structure of the French state, in addition to the French state's constitutive liberal-democratic political principles, such as pluralism, freedom of expression, and human equality for example, the French state has been forced to slough off and discard various essential aspects of its fundamental political apparatus in order to accommodate orthodox Islamic ideology within its socio-political fabric, and, as a result, the French state has subsequently deviated from the quintessential liberal-democratic political ideology and the obligatory political iteration that previously caused it to achieve a comprehensive success, prosperity, and security within the international political system.

For instance, the political principle of *laïcité*, or the belief that there should be an absence of religious involvement in government affairs, as well as an absence of government involvement in religious affairs, is a rudiment of France's liberal-democratic national ideology, and, therefore, a constitutive principle of the French state (Berkley Center for Religion, Peace, and World Affairs at Georgetown University). Furthermore, since France has consistently adhered to the principle of *laïcité* and has unerringly accommodated this principle within its socio-political fabric, the French state has heretofore enhanced its national security and caused its nation to prosper, due to the fact the French state has remained unimpeded and unbothered by the ethical and moral issues that plague those states whose politics are dictated and determined according to their religious beliefs and doctrines, such as Saudi Arabia (Dekmejian 1994, 630). However, since the orthodox Islamic ideology that has penetrated into France, via the French state's abhorrently inadequate migration policies, explicitly rejects a separation of church and state, and, instead, calls for all political states to reflect Islamic, 'sharia', law (Leiken 2005), the French state has consequently been forced to renounce, repudiate and reject the essential principle of *laïcité* from within its society. For example, due to the migration of orthodox Islamic ideology and scores of its adherents within the French cities of Amiens, Roubaix, and Marseille, in addition to countless other French polities, various French neighbourhoods are now governed according to sharia law, and, as a result, the once-constitutive principle of *laïcité* has effectively been eradicated and expunged from these environs (Kern 2012).

Moreover, in addition to the principle of *laïcité*, the political principle of 'personal liberty,' an imperative, elemental, and constituent component within any liberal-democratic political ideology or structure, has consistently been considered sacrosanct and inviolable within France (Perrault and Debaecker 2015). However, since the migration of orthodox Islamic ideology throughout French society has summarily elicited innumerable terrorist attacks and a profound insecurity within the French state, the French regime has drastically restricted, violated, and contravened the personal liberty of the French citizenry, in a vain attempt to excise Islamic terrorism from within its society. For example, following the terrorist attacks in Paris on November 13th, 2015, the French regime invoked a state of emergency within France's borders, and, thereby, dubiously allocated itself with the power, as well as the potential, to egregiously violate, contradict, and refuse the personal liberty and the rights of the French citizenry, despite the fact that this endeavor is quintessentially incongruent with the French state and with France's foundational liberal-democratic ideology (Griffin 2015).

As the persistent penetration of orthodox Islamic ideology within France has forced the French state to abandon its quintessential and constitutive political principles, such as *laïcité* and the personal liberty of its citizens, France has consequently been precluded from its ideal political functions and forced to deviate from its essential political trajectory and fundamental political constitution, which has inexorably destabilized the French state and caused it to dramatically degenerate. For example, due to the fact that France has abandoned even a token respect for the principle of *laïcité*, and, moreover, has ominously separated the French citizenry from its liberty, the French state's once propitious economic growth has emphatically stalled and unemployment in France has ballooned to ludicrous proportions (Warner 2014). Furthermore, since 2012, France has been victimized by vicious and innumerable Islamic terrorist attacks, which incontrovertibly confirms that

national security within the French state has unequivocally and undeniably eroded (French Ministry of Foreign Affairs and International Development 2016).

Consequently, it is irrefutably evident that, following the penetration of orthodox Islam and its inherently contradictory ideology within French society, at the behest of France's own minimally restrictive, abhorrently inadequate migration policies, tragically, the French state has been forced to abandon the foundational political principles, ideology, policies, institutions, and practices that hitherto engendered its national success and security within the international political system, regardless of the precipitous national degeneration and the delectable economic decline that this deviation has inculcated within French society. Subsequently, it is absolutely incontrovertible that France, as a result of its own overwhelmingly inadequate, unrestrictive, migration policies and contingent penetration with a foreign, inherently contradictory ideology, has been forced to radically deviate from the fundamental political trajectory and the quintessential political constitution that previously permitted it to succeed and secure itself within the violent, inherently anarchic, international political system, and, consequently, has collapsed into the caress of a supple insecurity.

Therefore, it is readily apparent, and, unfortunately, comprehensively confirmed via the incorrigible experiences of innumerable forlorn EU nations, that if a state is penetrated by an ideology that inherently contradicts its own respective foundational political ideology, then, when the state attempts to accommodate the inherently contradictory ideology within its socio-political fabric, the state is inevitably forced to abandon its fundamental political ethos and values, as well as its essential political apparatus and laws, since the state attempts to express a political ideology which categorically controverts and repudiates as invalid the constitutive principles of the state's society and its political structure as a whole. Consequently, the state inexorably deviates from the political trajectory and the political constitution that previously engendered its success within the international political system and allowed it to secure itself against the omnipresent, eternal rigors of *fortuna*. Therefore, the state becomes destabilized, fraught with insecurity, and inevitably collapses into a nigh inescapable degenerative cycle, which terminates, necessarily, with the manifestation of anarchic conditions within the state and, summarily, the state's precipitous collapse.

MACHIAVELLI AND MONTESQUIEU: DISCOURSES ON MIGRATION AND THE COLLAPSE OF ROME

Although the unfortunate experiences and the wretched histories of countless nations inexorably confirm the desolation and the collapse that unequivocally await any state which indulges in and embraces inadequately restrictive and ineffectual migration policies, innumerable endearing modern liberal idealists still attempt to champion and to plead for an unmitigated migration of people and ideas throughout the international political system. However, despite the ignorant supplications of modern liberals, the foundational and inviolable documents of liberal political thought, in addition to the pre-eminent and indispensable elucidations of realism, explicitly confirm that, if any state fails to adequately restrict the migration of people and ideas across its borders, then that state will inevitably become penetrated by a foreign, inherently contradictory, ideology, and, as a result, eviscerated by an unrelenting insecurity.

Firstly, throughout the obligatory articulation of liberal political theory, *Considerations on the Causes of the Greatness of the Romans and Their Decline*, one of the seminal architects of liberal political thought, Charles-Louis de Secondat, Baron de La Brède et de Montesquieu, incontrovertibly declares that the migration of a foreign, inherently contradictory, ideology within a state is inevitably pernicious and profoundly destabilizing; in addition, the Baron de Montesquieu specifically cites the penetration of foreign, inherently contradictory, ideology into the Roman state as the underlying cause for the Roman Empire's unceremonious decline and virulent collapse. For example, the Baron de Montesquieu states that:

> the strength of the [Roman] republic consisted in discipline, austerity of morals, and the constant observance of certain customs, they corrected the abuses that the law had not foreseen, or that the ordinary magistrate could not punish…In Rome, everything that could introduce dangerous novelties, change the heart or mind of the citizen, and deprive the state — if I dare use the term — of perpetuity, all disorders, domestic or public, were reformed by the censors (Montesquieu 1999, 86).

Moreover, in *Considerations on the Causes of the Greatness of the Romans and Their Decline*, the Baron de Montesquieu writes that:

> Rome […] accorded the coveted right of citizenship to the allies who had not yet ceased being loyal, and gradually to all. After this, Rome was no longer a city whose people had but a single spirit, a single love of liberty, a single hatred of tyranny […] Once the peoples of Italy became its citizens, each city brought to Rome its genius, its particular interests, and its dependence on some great protector. The distracted city no longer formed a complete whole. And since citizens were such only by a kind of fiction, since they no longer had the same magistrates, the same walls, the same gods, the same temples, and the same graves, they no longer saw Rome with the same eyes, no longer had the same love of country, and Roman sentiments were no more (Montesquieu 1999, 92-93).

In these two aforementioned quotations from *Considerations on the Causes of The Greatness of the Romans and Their Decline*, the Baron de Montesquieu describes how the strength and security of the Roman state emanated from the quintessentially Roman ideology, values, and norms that determined Rome's socio-political constitution and structure. Furthermore, via the two aforementioned quotations, the Baron de Montesquieu unequivocally communicates that, once the Roman Empire began to admit the many Italian peoples into its citizenry, the foreign customs and norms of the various Italian peoples irreversibly altered the national ideology and values of the Roman state, and, consequently, the Roman state was caused to deviate from the quintessentially Roman ideology and values whereby it had previously preserved itself and made itself prosperous, which thereby compromised the national security and political constitution of the Roman state.

Additionally, the Baron de Montesquieu elucidates further in *Considerations on the Causes of the Greatness of the Romans and Their Decline* and emphatically states that:

> In this later period, however, not only did [the Romans] fail to observe this proportion of auxiliary troops, but they even filled the corps of national troops with barbarian soldiers […] Thus, they established practices wholly contrary to those that had made them universal masters. And, as formerly their constant policy was to keep the military art for themselves and deprive all their neighbors of it, they were now destroying it among themselves and establishing it among others […] Here, in a word, is the history of the Romans. By means of their maxims they conquered all peoples, but when they had succeeded in doing so, their republic could not endure […] Contrary maxims employed by the new government made their greatness collapse (Montesquieu 1999, 168-169).

In the preceding quotation, the Baron de Montesquieu clearly explains that the adoption of foreign, barbarian soldiers into the Roman military caused the foreign, inherently contradictory, ideology and practices that the barbarians espoused to become entrenched within Roman society and displaced the quintessentially Roman national ideology and values from the Roman state and the Roman citizenry. Furthermore, via the preceding quotation, the Baron de Montesquieu clearly argues that this entrenchment of foreign, inherently contradictory, barbarian ideology within Roman society, and the resultant displacement of the quintessentially Roman national ideology and values from the Roman state and the Roman citizenry, prompted the Roman state to deviate from its essential foundational national ideology and ideal political trajectory, which consequently caused the Roman state to collapse.

Therefore, via the aforementioned quotations from the elemental articulation of liberal political theory, *Considerations on the Causes of the Greatness of the Romans and Their Decline*, it is readily apparent that the French patriarch of liberal political thought, Charles-Louis de Secondat, Baron de La Brède et de Montesquieu, incontrovertibly confirms that the migration of a foreign, inherently contradictory, ideology within a state is inexorably destabilizing, and, in addition, specifically cites the penetration of foreign, inherently contradictory, ideology into the Roman state as the underlying cause for the Roman Empire's irrevocable decline and collapse. Moreover, in one of the quintessential and pre-eminent expositions of realist political theory, *Discourses on Livy*, the august primogenitor of realism, Niccolò Machiavelli, argues that, if a state is injected with a

foreign, inherently contradictory, ideology, then its political constitution and national security will ineluctably become compromised, and, as a result, the state will unequivocally implode into a degenerative and ultimately fatal cycle of anarchy and insecurity, if it is not expediently reoriented according to its foundational political ideology and essential political constitution. For example, Machiavelli states in *Discourses on Livy* that:

> Because of the liberality that the Romans practiced in giving citizenship to foreigners, so many new men were born in Rome that they began to have so much share in the votes that the government began to vary, and it departed from the things and from the men with which it was accustomed to go. When Quitus Fabius, who was censor, perceived this, he put all these new men from whom this disorder derived under four tribes, so that by being shut in such small spaces they could not corrupt all Rome (Machiavelli 1996, 309-310).

In this quotation, Machiavelli clearly explains that the growth of foreign, inherently contradictory, ideology within the Roman Empire had begun to destabilize the Roman state and lead it towards its own ruin. Moreover, in this quotation, Machiavelli also communicates that the destabilizing effect of this foreign ideology was only prevented from spreading throughout the Roman state via the segregation of the foreign ideology into four tribes or sectors that, due to their confinement, could barely interact with the Roman political apparatus. Without this confinement, Machiavelli acknowledges that these foreign ideologies would have corrupted the Roman citizens, as well as fundamentally compromised the national security and political constitution of the Roman state.

Additionally, Niccolò Machiavelli explains that all states must undergo a renewal or regeneration process, whereby they divest themselves of the foreign, inherently contradictory ideologies, norms, and values that have come to rest within their borders, and thereby return to their own fundamental 'good', or foundational national ideology. Machiavelli argues that, if a state should fail to undergo this renewal or regeneration process, then the state risks its own inevitable ruin and insecurity, due to the ever-increasing influence of the debased ideologies and values that have invariably come to rest within the state's borders. For instance, Machiavelli states in *Discourses on Livy* that:

> It is a very true thing that all worldly things have a limit to their life; but generally those got the whole course that is ordered for them by heaven that do not disorder their body but keep it ordered so that it does not alter or, if it alters, it is for safety and not to its harm. Because I am speaking of mixed bodies, such as republics and sects, I say that those alterations are for safety that lead them back towards their beginnings. So those are better ordered and have longer life that by means of their orders can often be renewed or indeed that through some accident outside the said order came to the said renewal. And it is a thing clearer than light that these bodies do not last if they do not renew themselves (Machiavelli 1996, 209).

Furthermore, Machiavelli states that:

> The mode of renewing them is, as was said, to lead them back towards their beginnings. For all the beginning of sects, republics, and kingdoms must have some goodness in them, by means of which they may regain their first reputation and their first increase. Because in the process of time that goodness is corrupted, unless something intervenes to lead it back to the mark, it of necessity kills that body (Machiavelli 1996, 209).

and that:

> one should not wish ten years at most to pass from one to another of such executions; for when this time is past, men begin to vary in their customs and to transgress the laws. Unless something arises by which punishment is brought back to their memory and fear is renewed in their spirits, soon so many delinquents join together that they can no longer be punished without danger […] Men began to dare to dare to try new things and to say evil; and so it is necessary to provide for it, drawing [the state] back toward its beginnings (Machiavelli 1996, 210-211).

In the preceding quotations from *Discourses on Livy*, *Niccolò* Machiavelli emphatically describes how every state must return to its foundational national political ideology and expunge the foreign, inherently contradictory, ideologies and values from its political constitution that have, over time, penetrated into the state and gestated within its bowels, or else the myriad foreign, inherently contradictory, ideologies that have corrupted the state's political institutions and which seek expression within the political constitution of the state will subvert the state and cause it to implode.

Evidently therefore, via the aforementioned quotations from the incontrovertible and obligatory exposition of realist political theory, *Discourses on Livy*, Niccolò Machiavelli, the ineffable paterfamilias of realism, confirms that, if a state is injected with a foreign, inherently contradictory, ideology, then that state's political constitution and national security will inexorably become compromised, and, as a result, the state will inevitably implode into a degenerative cycle of anarchy and insecurity, if it is not expediently reoriented according to its foundational political ideology and quintessential political constitution.

Consequently, it is clear that Charles-Louis de Secondat, Baron de La Brède et de Montesquieu, one of liberalism's patron saints, and Niccolò Machiavelli, realism's prodigious patriarch and pre-eminent protagonist, both incontrovertibly confirm that, if a state is penetrated with a foreign, inherently contradictory, ideology, then the state's political constitution and national security will ineluctably become compromised, and, consequently, the state will unerringly implode into a degenerative cycle of anarchy and insecurity, if it is not reoriented according to its foundational political ideology and constitution. Moreover, it is therefore readily apparent that, despite the supplications of modern liberalism, the constitutive and inviolable documents of liberal political thought, in addition to the essential, indispensable, elucidations of realist political theory, unequivocally confirm that, if any state fails to adequately restrict the migration of people and ideas across its borders, then that state will inevitably become penetrated by a foreign, inherently contradictory, ideology, and, as a result, eviscerated by an unrelenting insecurity.

CONCLUSION

Perforce, the rudimentary processes of globalization have eliminated innumerable erstwhile, archaic, impediments to international migration, and, consequently, the migration of people, goods, and ideas between states has become inordinately prevalent within the modern international political system. For example, enormous refugee populations have emerged from within collapsing states, such as Syria, and now migrate throughout the international political system in search of solace within foreign, stable, states (Syria's Civil War Explained: The Syrian Civil War Is the Deadliest Conflict the 21st Century Has Witnessed Thus Far 2016). Moreover, countless contemporary states have become enamored of the benefits that can, potentially, accompany the fluctuations of international migration, and, as a result, they have revised and liberalized their political policies, in order to encourage the migration of people, goods, and ideas across their borders (EUR-Lex: Access to European Union Law 2011). Evidently therefore, it is imperative to ascertain the nature of international migration and to determine the detriments, as well as the advantages, that accompany its processes, in order to accurately comprehend and conceptualize the dynamics of state security within the modern international political system.

As the advent of globalization has continued to enable and encourage the migration of people and ideas throughout the international political system, certain political pundits have become captivated by the superficial benefits that, at times, accompany the movements of peoples and ideologies (Kukathas 2005, 215). Consequently, during the modern era, a barely restricted, minimally regulated, migration of people and ideas throughout the international political system has become the subject of categorical praise and arduous adulation (Baylis et al. 2008, 8). However, although innumerable contemporary liberal political actors fervently promote unrestrictive, inadequate migration policies and enthusiastically proclaim that the migration of people and ideas between states is a quintessentially beneficial process, their proclamations are utterly misled and impressively inaccurate. Rather, despite the romantic edicts of modern liberalism, the experiences and the histories of innumerable nations unequivocally demonstrate that, if any state fails to adequately restrict the international migration of people and ideas across its borders, then that state will incontrovertibly become destabilized, and its national security irrevocably shattered, due to the fact that the state’s minimally restrictive, inadequate, and ineffectual, migration policies will inevitably cause the state to be penetrated by a foreign ideology that inherently contradicts the state’s own respective foundational political ideology and values.

Firstly, if a state is penetrated by an ideology that inherently contradicts its own respective foundational political ideology, then, when the inherently contradictory ideology struggles for political expression within the state, the inherently contradictory ideology and its adherents comprehensively reject the state, as well as the legitimate channels for political expression within the state, due to the fact that the state, along with its essential political institutions, structures, and laws, is predicated upon a fundamental political ethos and values that the inherently contradictory ideology and its adherents explicitly repudiate. Subsequently, when the inherently contradictory ideology and its adherents pursue political expression and accommodation within the state, they struggle violently against the state, without a modicum of respect for the state’s essential laws or the rights of the state’s citizenry, which causes the state’s citizenry to become reciprocally violent and hostile in

turn, since their security has been demonstrably threatened via this flagrant violation and disregard of the state, its constitutive laws, and its fundamental political order. As a result, the state and its society degenerate into a condition that distinctly mirrors the hostile, Hobbesian state of nature, and, consequently, overwhelming insecurity and instability permeate throughout the state.

Moreover, if a state is penetrated by an ideology that inherently contradicts its own respective foundational political ideology, then, when the state attempts to accommodate the inherently contradictory ideology within its socio-political fabric, the state is inevitably forced to abandon its fundamental political ethos and values, as well as its essential political apparatus and laws, since the state attempts to express a political ideology which categorically controverts and repudiates as invalid the constitutive principles of the state's society and its political structure as a whole. Consequently, the state inexorably deviates from the political trajectory and the political constitution that previously engendered its success and prosperity within the international political system, as well as allowed it to secure itself against the omnipresent, eternal rigors of fortuna. Therefore, the state becomes destabilized, fraught with insecurity, and inevitably collapses into a nigh inescapable degenerative cycle, which terminates, necessarily, with the manifestation of anarchic conditions within the state and, summarily, the state's precipitous collapse.

In fact, although modern liberals incessantly promote the EU as a living exemplar for the virtues of contemporary liberalism and basic, unrestrictive, migration policies, the experiences of innumerable contemporary EU states emphatically contradict these spurious claims. For example, when the experiences of various EU states, such as France or Denmark, are analyzed, the experiences of these woe-begotten, despondent nations unequivocally confirm that, instead of becoming enriched or improved, the states of the EU have actually deteriorated and become fraught with rampant social conflict, insecurity, and instability, as a result of their minimally restrictive, liberal, migration policies and consequent penetration with the foreign, inherently contradictory ideology of orthodox Islam.

Furthermore, despite the ignorant exclamations of modern liberals and their incessant promotion of an unrestricted migration of people, goods, and ideas between states, the foundational and inviolable documents of liberal political thought, in addition to the pre-eminent, indispensable elucidations of realism, explicitly confirm that, if any state fails to adequately restrict the migration of people and ideas across its borders, then that state will inevitably become penetrated by a foreign, inherently contradictory, ideology, and, as a result, brutally eviscerated by an unrelenting insecurity. For instance, in one of the obligatory articulations of liberal political theory, *Considerations on the Causes of the Greatness of the Romans and Their Decline*, the seminal architect of liberal political thought, Charles-Louis de Secondat, Baron de La Brède et de Montesquieu, incontrovertibly declares that the migration of a foreign, inherently contradictory, ideology within a state is inevitably destabilizing and profoundly pernicious; in addition, the Baron de Montesquieu specifically cites the penetration of foreign, inherently contradictory, ideology into the Roman state as the underlying cause for the Roman Empire's unceremonious decline and virulent collapse. Moreover, in one of the quintessential expositions of realist political theory, *Discourses on Livy*, the primogenitor of realism, Niccolò Machiavelli, argues that, if a state is injected with a foreign, inherently contradictory, ideology, then its political constitution and national security will ineluctably

become compromised, and, consequently, the state will unerringly implode into a degenerative cycle of anarchy and insecurity, if it is not expediently reoriented according to its original, foundational political ideology and values.

Therefore, it is readily apparent that, in spite of the idealistic and endearing supplications of modern liberalism, if any state adopts minimal, meagerly restrictive, migration policies and fails to appropriately restrict the migration of people and ideas throughout its society, then that state will certainly become destabilized, and its national security irrevocably shattered, due to the fact that the state's ineffective, unrestrictive, and inadequate migration policies will inevitably cause the state to become penetrated by a foreign ideology that inherently contradicts the state's own respective foundational political ideology and fundamentally repudiates its essential political structure.

As a result, it is incontrovertible that, although modern liberals unabashedly and incessantly extoll the virtues of an uninhibited migration of people, ideas, and goods throughout the international political system under the pretenses of personal liberty and cosmopolitan human rights, the aforementioned exhortations are maliciously false, and, instead, represent a meager ideological manifestation of modern liberalism's insatiable appetite for excess and flagrant disregard for security, rather than any altruistic or legitimate attempt to ameliorate the desperate plight of states within the inherently anarchic international political system. Moreover, it is subsequently ineluctable that, in order to elicit the economic and social benefits that are so often discussed and, yet, so rarely achieved vis a vis international migration, modern states must implement realistic, protectionist, migration policies and embrace the supreme Socratic virtue of abject moderation, not an unmitigated international migration of people and ideas, or else they court the affectations of a terrible insecurity, rather than the enervating embrace of economic increase and the supple, sensuous, caress of social stimulation. 

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Indexing
Abstracting

UNFREEZING THE "OTHER": COLLECTIVE TRAUMA AND PSYCHOLOGICAL WARFARE OVER THE NAGORNO-KARABAKH RIVALRY

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Abstract

This paper aims to lead an overview on Nagorno-Karabakh rivalry between Armenia and Azerbaijan in order to highlight the frozen state of affairs through an alternative prospective left currently out within the peacekeeping operations. Therefore, main attention is not paid to OSCE-Minks attempts to unfreeze the ethnic conflict, however to the role of collective trauma and historical imaginary to point out the Other question that will be performing a structural role when the two-decades-war will be hopefully over. Hence, what is to be forgotten from wrenching past? How will the figure of the Other – no matter Armenian or Azerbaijani – affect the post-conflict scenario currently negated by cultural prejudices and political propaganda?

Key words: Nagorno-Karabakh; "frozen conflict"; "Otherness"; collective imaginary; psychological trauma

INTRODUCTION

The worsening conflict in Nagorno-Karabakh is the oldest war in the former Soviet orbit and the Europe's longest continuous military confrontation between Armenia and Azerbaijan. In the current insecurity and uncertainty scenario over the two-decades-conflict, it is surprising that neither side are ready to compromise due to a lack of social restoration and peace agreement they should establish. However, the two Caucasian young republics' real grievances and legitimate claims under international law have generated a "war of law-s" by which both states have been over years clinging to their "all-or-nothing" outlooks. Although Minsk Group's mediation pays regular visits in the field, several attempts to reach a peace resolution in long-term perspective have failed due to a lack of political motivations and wills in order to definitely compromise (Ayunts, Zolyan, and Zakaryan 2016).

The European Union initiatives of the Eastern Partnership (EaP), too, in which Armenia and Azerbaijan are post-Soviet Member States, seem to be unless in their concrete application. This paper will be threefold.

Firstly, I will try to briefly unravel the historical background over territorial conflict in order to lead a general overview regarding the most important events and to step forward to the second key-area. Here, I will privilege more categories of culture and social dimensions to describe the cluster of emotions, prejudices and perceptual distortions manipulatively driven by historical imaginary and collective trauma in turn controlled by ruling élites. By doing so - according to many intellectuals, cultural historians and political experts - I will argue that political discourses, ideology and historical narrative ought to be privileged categories of social analysis (Curtis 1997, 3) in order to supplant the older view that human societies have to be studied as a realm of competing structures, contending classes and groups. Few statistical analyses will be provided in order to introduce the third part about the "Other question", which would be fit best for the purpose of the paper. Besides open sources I below mention in the paper, interviews were conducted during my personal visit in the de facto Minister of Intern and in the rural villages of Hadrut and Shoushi with locals, of whom the majority is currently performing at the Armenian Armed Forces alongside the Line of Contact (LoC). All participants were promised anonymity, a necessary precaution in the present political climate and situation of Nagorno-Karabakh conflict.

Therefore, through a dismantlement of the idea of national purity and the myth of exclusive belongingness, I will introduce the structural role of the Other that - no matter Armenian or Azerbaijani - will come to perform in the future post-conflict scenario despite the current negation from both sides. In conclusion, by insisting on the significance role of historical location and process of internally displacement, one point must be clear. Granted territorial ruptures over Nagorno-Karabakh explore deeply the remarking of Armenian and Azerbaijani identity, this paper aims to introduce a challenging prospective within the current peacekeeping operations by paving a sustainable way - at least theoretically - towards a future of well-living together. However, I deal with an approach based on the philosophical boundary between Self and the Other (Glavanakova 2016, 46) that could be misleading with regard to this two-decades-conflict between two states, Armenia and Azerbaijan, tied partially to other two states, namely Russia and Turkey.

BACKGROUND

Since 1923, in spite the majoritarian community was Armenian before the Sovietisation of the Southern Caucasus, the Nagorno-Karabakh was administratively assigned to the Turkic-Islamic Soviet republic. Because of that, the Nagorno-Karabakh Autonomous Oblast (NKAO) remained ethnically and culturally a hybrid and without a self-identification as well as recognition in terms of historical legacy and cultural heritage. It followed that a psychological model and epistemological configuration of the subjects living the enclave were considerably simplified (Tlostanova2005, 194) similarly to the entire Soviet orbit. Therefore, Armenian and Azerbaijani locals were forced to lean towards a rigid ethno-cultural model of "one Soviet people" (Kundera 1984, 1), heavily russified and without possibility to find their self-realization according to their religions or socio-cultural patterns. Due to this overwhelming Communist reduction, attempts to unravel the

enclave resettlement after the collapse of the Soviet system turned negatively enough from a considered look (Griffin 2001, 1) to ethnic uprising over mountainous region. With the collapse of Soviet system, as ideology as political regime, and the euphoria for the fall of Berlin Wall, the ethnic turmoil of Nagorno-Karabakh began to impinge the state-buildings of the formerly Armenian SSR and Azerbaijan SSR from within.

During the Soviet era, specifically with the Nikita Khrushchev and Leonid Brezhnev times, in Armenia there were constant attempts by students and youths to find alternative organizations to the Communist Party. In the meantime, demands and campaigns for recognition of the Ottoman genocide and the reclamation of the lost lands were at the heart of the political activity. In 1966, for sample, the National Unification Party called for an Armenia as independent state, which would include the Karabakh enclave, the Azerbaijani exclave of Nachichevan, and the Turkish controlled Western Armenia (Goldenberg 1994), namely the former Armenian millets of the Ottoman Empire in Anatolia. All those demands have been always ignored by Kremlin.

When on the 20th February 1988 the Local Council of the People's Duties of Nagorno Karabakh Autonomous Region (NKAO) decided to secede from Azerbaijan SSR, it was not expected that the conflict between the Caucasian young republics would take place for so long time. Overcoming the non-Armenian resistance of Azerbaijani duties and chairperson, who were loyal to the central Azerbaijani SSR government in Baku, the Armenian declaration led clashes and broad tensions among Armenian civilians within the territory of Azerbaijan SSR (Savin 2015, 106-107) and, in turn, among Azerbaijani inhabitants within the collapsing Nagorno-Karabakh Autonomous Oblast. Since then, a point of no-return began to negatively shape as Armenian as Azerbaijani refusals to looking for a peaceful solution; their inability to forget and the impossibility to grasp the horror and liberation (Glavanakova 2016, 175) became collective traumas.

Throughout the sub-regional uprising, Armenia decided to bind itself to Russia, allowing military bases to remain as open displays of muted Russian influence in light of the Christian Orthodox alignment. On the other side, Azerbaijan took an even more risky path (Griffin 2001, 183) due to its bickering politicians who without Russian military aids tried to achieve benefits from the powerful economic position flirting with Turkey, United States, France, and Britain. Hence, the territorial turmoil affected deeply Azerbaijan on one side, a post-Soviet Turkic country rooted in its Persian cultural heritage and Transcaucasian powerhouse of global energy supplies thanks to the oil flowing in abundance from its shores, and Armenia on the other side, the first ever nation-state to adopt Christianity as its state religion. Although the conflict of Nagorno-Karabakh was heavily showing how ethnic issues started to be politicised and how cultural differences interplayed a fundamental role in the process of constructing societal identity and ugliness of ethnic cleansing, the wider scenario cannot be taken into the arguable account of Huntington's *Clash of Civilizations*.

According to the Bulgarian expert Alexandra Glavanakova, indeed, Huntington's classification dismisses itself out from a more largely and arbitrary criteria and, specifically to Nagorno-Karabakh outbreak, the latter seems to be not aligned to his list alike a wide range of worldwide ethnic riot. Nagorno-Karabakh rivalry was not triggered neither by religious schism in the Transcaucasian region in order to reallot the former Autonomous Oblast back to the Christian Armenia or to the Muslim kinship of Azerbaijan. However, the stress shifts on the subjective identification of individuals with their own community, in which ethnic issues address ontologically and respectively the idea of "ethnicity" (Krasteva

2015, 4) in terms of a given group with objective, existence and subjective sense of belongingness. For example, the former Armenian President Levon Ter-Petrosyan, has rejected the idea of any religious motivation from the beginning.

Moreover, the Nagorno-Karabakh rivalry has specifically created from the beginning a mutual separation of a non-ethnic "Us" and ethnic Others (Smith 1996, 4) based on proper name; myth of common ancestry including the idea of common origin, which gives to the group a sense of kinship; shared memories of common past; heroes and events; elements of common cultures, like language, religion or customs; a link with a homeland; and, a sense of collective solidarity. In the case of Armenia and Azerbaijan, both communities depict their nations as "a great family" where brothers and sisters of the motherland or fatherland evoke strong loyalties and vivid attachments. Besides, hundreds of thousands of Armenians and Azerbaijanis have lost their homes in a forced population transfer[1] and have been living for generations outside their own republics. In details, the first military actions of the conflict - according to the official data from the government of Azerbaijan - led to Azerbaijan 30.000 were injured, 7000 being disabled for life and 5000 citizens are reported as missing. Throughout the same period of war, the Armenian side lost 6000 citizens, 20000 people were injured and more than 5000 Armenians have gone missing (Kirvelyté, 2015).

In early April 2016, the so-called "Four-Day War" alongside the Lines of Contact (LoC) reminded the international community that this long-ignored "frozen conflict" has begun to heat drastically up without finding out a stable resolution yet. More than hundred causalities on both sides, 150 wounded among civilians and military staff, and approximately 15 thanks destroyed with a wide range of Unmanned Aerial Vehicle (UAV), is the result of the last peak of military escalation erupted on 2nd and ceased on 6th (Lorusso 2016, 1) after the umpteenth ceasefire agreement. Until now, over 20% of *de jure* recognized territory of Azerbaijan still remains under the control of de facto Republic of Artsakh - Nagorno-Karabakh (Kirvelyté 2015, 24-25), including neighbouring Azerbaijani districts too. As the table indicates below, in spite it does not provide the entire scenario after the early April 2016 escalation, after which Azerbaijani troops have been retaken the control over 900 mq^2 of Martakert region. Armenian armed forces have occupied several de jure Azerbaijan regions surrounding the entire Nagorno-Karabakh in order to buffer a sanitary zone in protection of Karabakh Armenians.

Table 1: Nagorno-Karabakh Buffer Zone Occupied by Armenian Armed Forces (Source: The Margins of the Nagorno-Karabakh Conflict: In Search of Solution, 2015)

	% of *de facto* territorial control by Armenian armed forces	*De Jure* Azerbaijani lost territory in Nagorno-Karabakh
Kelbajar-Karvacher	100%	1.936 km
Lachin-Abdollyar	100%	1.835 km
Kubatli-Vorotan	100%	802 km
Jebrail-Jrakan	100%	1.050 km
Zangelan-Kovsakan	100%	707 km
Agdam-Akna	77%	842 km
Varanda-Fuzûlî	33%	462 km

[1]This phenomenon, well-known as "Internally Displaced Person-s" (IDP-s), has increased the academic literature concerning studies about migrations and conflict scenarios.

BEYOND THE CONFLICT: COLLECTIVE IMAGINARY AND PSYCHOLOGICAL TRAUMAS

Despite political attempts and OSCE-Minsk peacekeeping actions to unfreeze the territorial rivalry alongside the Line of Contacts (LoC), it seems no longer possible to solve the current situation within the framework of existing intergovernmental relations. The Republic of Azerbaijan declares its territorial integrity unshakeable and the full liberation of lost territories occupied by Armenians as main prerequisite condition for any substantial negotiations with Armenia, considered guilty to support an illegal occupation. Moreover, Baku claims to plenty resettle *Qarabağ* to de jure territory according to the Soviet-Russian recognition that tied the enclave to Azerbaijan SSR in light to the Mongol, Turkish, and Persian legacy that the region has had even before the *sovietization* in 1923. On the contrary, *de facto* Republic of Artsakh - Nagorno-Karabakh continues to declare that the secession from the former Azerbaijan SSR administration, understood as the "liberation of Karabakh", is the legitimate result *ex factis jus oritur* (Krüger 2010, 89), namely a law arises from the facts. In addition, the Republic of Armenia has stubbornly pointed out that the struggle for independence and recognition brought all Armenians into a safety position (Savin 2015, 112) and guaranteed justice and protection against the whimsical appropriation of Artsakh imposed mistakenly by Stalin himself (Yunusof 2005, 28) through an incorrect placement of Karabakh Armenians under the Turkic-Muslim Azerbaijan SSR.

In the meantime, Nagorno-Karabakh rivalry has been outlining what ethnic and military hostilities come emotionally to mean for both sides. Armenians consider the 1992-94 war a succeed attempt to avoid the continuation of the 1915 "Armenocide" (Peachey 1993, 35) perpetuated by Ottomans from Istanbul to the region of Anatolia. It followed that the worldwide Armenian community began to appreciate the resistance over Nagorno-Karabakh – which tends to persist - because conducted on behalf of all Armenians. In few words, the struggle over Nagorno-Karabakh seems to interplay the role of Armenians' Armenian-ness[2]. In the eyes of Armenians, the pogrom of Sumgait for sample, a soul-destroying town of Azerbaijan, was a turning point, and history has generally been turning the Armenians' spiritual and psychological wounds into a collective trauma (Grigorian 1991, 52), bleeding and festering with self-pity and vengefulness. In early February 1988, Azerbaijani reaction to the early stages of the Karabakh Movement was to attack and murder Armenian minority's civilians living in Azerbaijan SSR. Such cruel events have increased the Armenian fear of the Turkic-Muslim enemy and rekindled their memories to the Ottoman genocide that branded Armenian peoples' collective consciousness in turn. The Armenian theologian Vigen Grigorian has highlighted that the burden of traumatic history rests nowadays on the memory of Armenians living the contemporary Caucasian homeland, in which de facto Nagorno-Karabakh Republic is understood as part of it.

According to Nagorno-Karabakh issue, the communitarian empathy for this grieving faith triggered by deportation from Ottoman millets and followed by Diaspora could serve to explain why Armenian memory runs deeper over last 170 years back the division of the Armenian Kingdom in 387 d.C. (Griffin 2002, 184). Due to all of these, Nagorno-Karabakh became the symbol of survival and revenge after the first mass-scale genocide during the

[2]According to the Armenian constitution, the Article 19 regards the term Armenian-ness that draws the national identity and its millenarian heritages with a comprehensive legal usage linked with the Diaspora.

First World War and the Soviet takeover, and this is why Armenians maintain their intent clear in reclaiming what they see and understand as part of their historical legacy. Similarly, the Armenian occupation of the Lachin corridor in May 15 1992 come to geographically mean not only a conjunction between the post-Communist territory of Armenia and the oblast of Nagorno-Karabakh, but mostly a reunification for all Armenians who felt to psychologically be into a safety region surrounded and protected by Armenians. What has been representing a strong argument for allocating Nagorno-Karabakh to Azerbaijan SSR due to the lack of passable road between Armenia SSR and the Armenian enclave of Karabakh, since 1992 began to shape a new condition for securitizing a strategic mountain pass and interplay the national-building process of the former Soviet Armenia and redefine the national borders between Armenia and Azerbaijan. By contrary, Azerbaijanis feel to have been victims of theft due to the "Armenian aggression" within a region they consider their own storehouse nurturing their finest musicians and poets and composers of their national anthem (Goldenberg 1994, 156). As Sumgait for Armenians, the massacre of Khojali that broke out between 25th and 26th February 1992 was crucial for Azerbaijanis in the bigger pictures.

By 1992, Azerbaijanis and Turkic-Meshkat minority's members living the village of Khojaly were expelled by Armenian armed forces from their homes, killed and several froze overnight to death. The frighten experience has psychologically trenched a higher barrier against Armenians, guilty for such massacre and who demonstrated their readiness to fight a full-scale war (Kirvelyté 2015, 25) while young Azerbaijani state was in a worse military position because of the political crisis in Baku of 1991-93 that stood in the way of mobilization[3]. The massacre of Khojaly could serve as historical proof to reveal Armenia's inability to control over its militants (Goldenberg 1994, 156) and remember how the military takeover of the village is still the symbol of historical betrayal conducted by "loader Armenians" (Denisenko 2015, 60) with the support of the 366th motorized infantry regiment of the former Soviet Army troops. However, the Soviet regime neither supports Armenian armed forces nor Azerbaijan in the territorial riot. In fact, the events following the Sumgait pogrom have shown the Soviet inertia (Goldenberg 1994, 154) and, during the Soviet time, the Kremlin political establishment never supported the Armenian campaigns for the Karabakh reallot back to Armenian SSR. The entire was paradoxically shown by one of the first leaders of Karabakh Movement, Igor Muradyan, who leading Armenians to the square by bringing portrays of Gorbachev in order to catch public attention of the former leader of Soviet Union. "*Lenin-Party-Gorbachev*!" would be the slogan that he had come up with himself but, some weeks later, he came up with another one "*Stalin-Beria-Ligachev*!" because no answers came from Moscow.

In sum, Khojaly tragedy and Sumgait pogrom, as well as the significant capture of the town of Shoushi by Armenian forces on 9th May 1992, have significantly been crucial points for the definite resettlement of Nagorno-Karabakh to de facto Armenian authority as well as the symbol of terrible human losses and key element for claiming justice for Azerbaijan. This is why the idea that individuals responsible for the death of civilians must receive an appropriate punishment is currently expressed (Denisenko 2015, 68) in the official confrontation timeline between Armenians and Azerbaijanis. Indeed, Khojaly

[3]However, the young Republic of Azerbaijan tried to take more active role than Armenia did in the ethnic turmoil all over the region of North Caucasus by projecting itself almost as a protector of some Turkic groups.

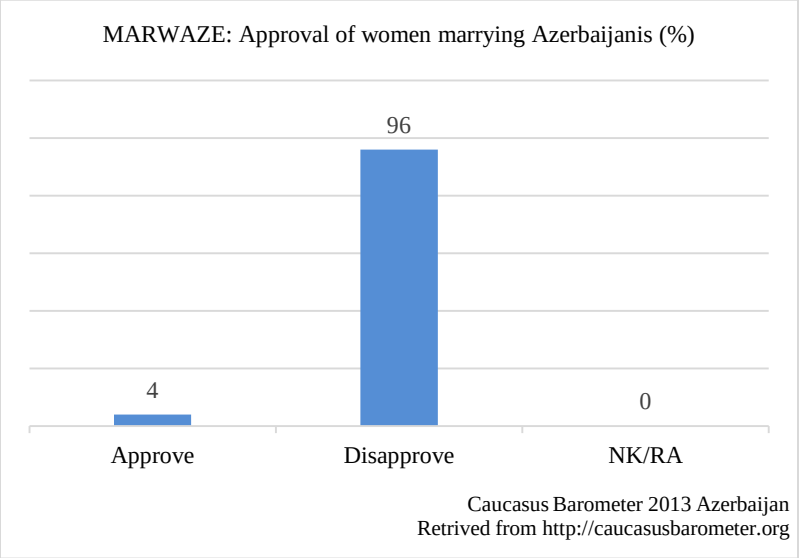
tragedy is commemorated, likewise the 1915 genocide for Armenians, not only in Azerbaijan at the "Mother's Scream" memorial in Baku, but also abroad – Istanbul, The Hague, Berlin, Sarajevo and Mexico City. All psychological and cultural aspects over Nagorno-Karabakh rivalry are painlessly holding the idea of a "society of loss" (Fedoseeva 2012, 399) since the uprising of the territorial conflict. Speaking historically, both communities involved in the conflict seem to highlight a new form of communicative mourning in deeply connection with a wealth of tumultuous, occupation, inquisitions, pogroms that have symbolically increased a more self-oriented collective faith and wrenching reality. Once again, symbols and images here connect a lot past experiences with an endless rivalry understood in terms of "perpetrators-against-victims".

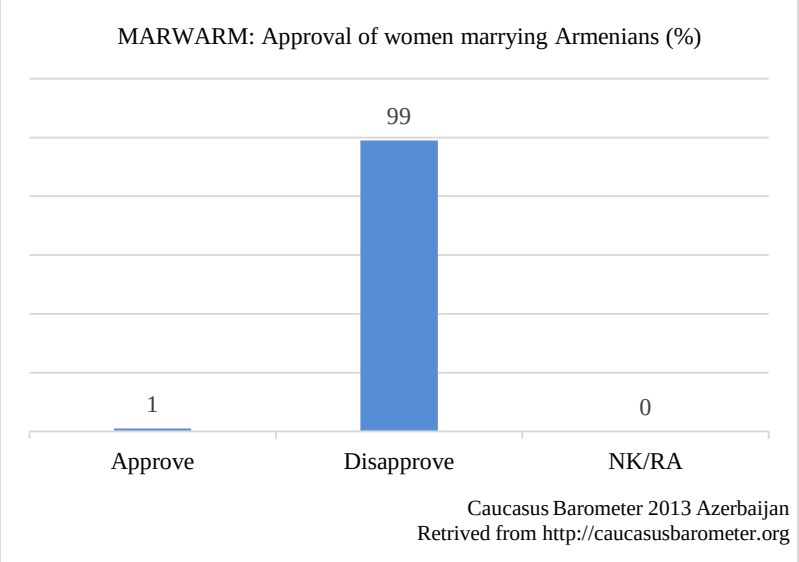
The last "Four-Day War" in early April 2016, for instance, has quickly made stronger and stronger the social relationships among Armenians due to the beheading of Karam Sloyan in the Line of Contact (LoC). The image of the Karabakh Defense Army soldier's head, uploaded in the social media and shown publicly off to Azerbaijani audience as a "fish-trophy", has pointed anew out a memory of tragedy that Armenians connect with their own historical faith.

All of these has shown to the international community how often threats can go forward to the sphere of human security over Nagorno-Karabakh. On one hand, for an event to interest the public opinion and the political mainstream must be something recognizable, it must affect people of whom we have heard spoken before (Gramsci 1912, 2). On the other hand, this public kind of recognition seems wrongly to affect the OSCE-Minsk operations and attempts for unfreezing the conflict between Armenia and Azerbaijan. In being hidden and concealed, collective traumas perform as structuring principles for various public discourses, socio-cultural practices and rituals, as well as political causes for the willingness to embroider marks of trauma into the structure of everyday life. In turn, by including social bonds, what arises here is an imaginary idea of "society of loss" which portrays and addresses those traumatic narratives from within. The concept of collective trauma is widely used in modern social science in order to explain many events in the collective mind. The concepts of psychoanalysis, especially those concerning the concepts of trauma or post-traumatic disorder, such as the loss of Nagorno-Karabakh for Azerbaijanis and vice versa the fear of losing the region for Armenians, are triggered by the impact of certain events connected to the feeling of pain (Ushakin 2009, 23). By translating the psychoanalytical apparatus to a sociological one and in turn to Nagorno-Karabakh issue, each collective trauma seems to set a pathway for the historical narrative, while not becoming a part of it. The traumatic experience intertwines with national identity they mutually strengthen one another and these psychological aspects upon the warfare exacerbate the image of the Other and his race of enemy through which stereotypes and prejudices intensify a feeling of pain. Hence, the communication of tragic events creates a history-oriented narrative (Glavanakova 2016, 56) because Armenians and Azerbaijanis are "imagines", i.e. they are held together by certain common features or imagines though the resources of both antagonist narrators, who provide "images" of the Other not by the past itself and not by the discipline of history. Rather, they give a public compilation of misleading images (Šutinienė 2011, 303) based on mythical and symbolic prejudices or stereotypes. For instance, according to the Yerevan sociologist Lyudmilla Harutyunian, who was one-time deputy in the Republic Supreme Soviet, points out that Armenians have forgotten the noble pages of their own history and they have created an

image of Armenians as victims, and it is a very deep image. During the twenty-five years, Armenian artists and writers have begun to address these problems (Guroian 1991, 52), and this is the main reason why most Armenian Church leaders have refused to recognize that the wrenching past brought the Armenian Christendom or secular legacy to an end.

Table 2: Question asked on approval of women of their ethnicity marrying with Armenians or Azerbaijanis (Source: Caucasus Barometer, 2013).

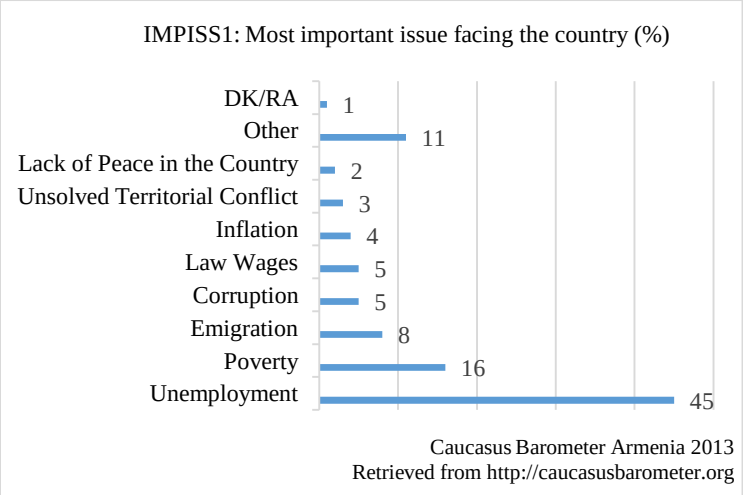


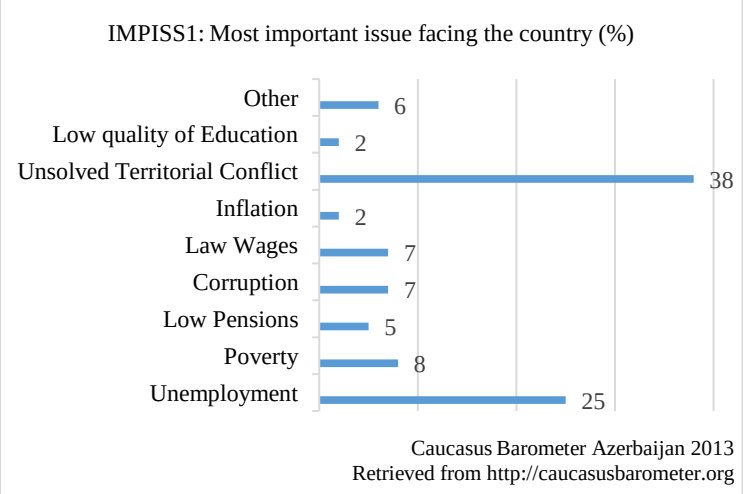


As the Table 2 shows upon (CRRC Barometer, 2013), when asked "do you approve of women of your ethnicity marrying with Azerbaijanis?" 96 % of Armenians responded disapproving such possibility, whereas in Azerbaijan the figure shows a 99% of people

disapproving as well. The figure in 2015, not provided in Azerbaijan, was the same in Armenia (CRRC Barometer, 2015). In retrospect, the Table 3 below compares what Armenians and Azerbaijanis think is the most important issue their own country faces at the moment, within the answer regarding the Nagorno-Karabakh issue, such as "unsolved territorial conflicts" and internal "lack of peace", that matters only 3 % and 2 % for Armenians, whereas 38 % for Azerbaijanis (CRRC Barometer, 2013). Despite higher % age than Armenian one, Azerbaijani result is paradoxically twofold: it is higher than unemployment and poverty issues, respectively 25 % and 8 % (CRRC Barometer, 2013), which are concerns in the so-called "cork" or "bottle" of the Caspian (Griffin 2001, 183), however it is not that high alike the previous result about human relationships.

Table 3: Question asked to Armenians and Azerbaijanis about the most important issue facing their own country (Source: Caucasus Barometer 2013).





In the political circles, the Nagorno-Karabakh issues seem to consolidate those Armenian and Azerbaijani ruling élites that manipulatively controlled them by using historical memory constructed to politically re-narrate the past and label what really happened to the new generations who use to attend public schools and watch public broadcasting where this narrative against the figure of the Other is present. Although only the 6,6% of all Azerbaijani, 7,1% of Armenian broadcastings and publications (Abasov 2003, 592) are devoted to the conflict, public school curricula and mass media continuously exacerbate the tense relations, while the ruling elites use every opportunity to dehumanize the other side (Ayunts, Zolyan, and Zakaryan, 2016, 1) given back to the public consciousness. This explains the Armenian tendency to elect politicians belonging to the so-called "Karabakh Clan" (Kirvelyté 2015, 29) to the top political position. Following Ter Petrosyan, who had no personal ties with Nagorno-Karabakh, both last two Presidents of Armenia, Robert Kocharyan, who was previously president of de facto Nagorno-Karabakh Republic (1994-1997) and Prime Minister of Armenia (1997-1998), as well as the current Armenian President Serzh Sarkisyan (2008-ongoing), who the second de facto head of Karabakh Armed Forces, come originally from the disputed region. On the other side, Azerbaijani scenario is not even positive. Whether the Armenia's institutional landscape engages with public figures as well as national organizations and parties belonging to "Karabakh Clan", the latter displays at least a political pluralism that, despite its low level, seems to be different from the neighbouring Azerbaijan the Alyev dynasty began to rule since 1993. Alike the Armenia's political belongingness tied with Karabakh, the former President Hydar Aliev (1993-2003) and his son Ilham Aliev, currently ruling as President of the young Republic, belong to de jure exclave of Nackichevan, bounded by Armenia and Iran with a short-border with Turkey, which continues to suffer its geographic position and the conflict with Armenia.

A FROZEN RELATIONSHIP

Although the Nagorno-Karabakh conflict was never a territorial dispute based on religious issues, Christian and Muslim belongingness of Armenians and Azerbaijanis could be a concern for future confrontation. Since the 1994 Bishkek Agreement, general attempts to unfreeze the tow-decades-conflict and many sustainable projects, such as *Dreaming of a Colourful Garden*[4], attempted constantly to provide alternative spaces for contact among Armenians and Azerbaijanis by replacing the Line of Contact (LoC) which physically separates both sides. Main goals remain to seek peaceful transnational spaces in order to step forward in direction of Madrid Principles and OSCE-Minsk peacekeeping operations and guarantee the redeployment to all Erazy-Azerbaijani and Armenian internally displaced persons to their former places of residence inside Nagorno-Karabakh. Therefore, the inevitable "Other question" will definitely come to perform a structural role for those generations of Armenians and Azerbaijanis who are slowly replacing the oldest ones. Their social imaginary offers negatively a counter-subjective representation of the Other through a product of the binary "Us-and-Them" opposition, which is a social construct, used in turn

[4]The title of the project aims to overturn the classical idea of the region negatively accounted into a "dark zone" due to the ethnic conflict and the meaning of the prefix-*Nagorno*, which derives from Russian attributive adjective "nagorny", literally "highland", and the suffix-*Karabakh*, a Persian word for indicating a "Black Garden".

to throw light on the conception of the Other in aloof way. Here, the negative mirror image of the Other seems to be clearly privileged because often expressed in terms of monstrous and alien Other (Glavanakova 2016, 45). "We're the victims, you're the perpetrators" could briefly serve as short quote upon the common notion of the Other originating from both sides, edited publicly out as well as partly glorified. Therefore, common empathy and sensitivity of Otherness seem thus to be internalized. Armenians bring alive for the further generations their historical plight portraying not simply as an object of distress, but through the subjects of its articulation and expression, not merely as victim but as agents, actors, and authors (Marjian 2016, 104). As the Armenian political scientist Levon Melik-Shakhnazarian speculated on the fortune of the Nagorno-Karabakh war of 1992-94, "in this case civilisation will win" (Goldenberg 1994, 154) because the Armenian past turned finally into a winning stage. Likewise, brainwashing and overwhelming political propaganda links Azerbaijani understanding with all psychological forms of war of ideas against the Other-Armenians, where the main weapons are image and sound, which organize successfully a process of negative persuasion (Martišius 2010, 195) over the territorial rivalry. All of these may affect the confrontation with the Other cementing negatively the creation of a wealthier community due to a demonization of the Other (Lorusso 2016, 5) fraught with bloody imaginary. Hence, shall Armenians and Azerbaijanis deal with historical memories and wrenching experiences, or will they crush once again when they will be living together? How do they image their everyday life after the definitive peace agreement? What is to be forgotten from the past and what is to be recorded in order to avoid future threats? Nowadays, the figure of the Other - no matter if Armenian or Azerbaijani – is permanently present in the social imaginary. Constructed by the Self in a variety of way, this perception of the Other arises a complex interaction between self-identification and definition provided by Others of oneself. On one side, internal and external impact of Otherness is simultaneously familiar and strange to everyone, however, according to Nagorno-Karabakh rivalry, it could hopefully affirm that when perspectives will be changing such holistic imaginary of the Other (Boesh 2007, 5) will change accordingly. Due to dynamism, relativity, continually fluctuating and ceaselessly reversibility of the role and figure of the Other under certain historical circumstances and cultural and socio-political extents, it may be possible to ensure the Nagorno-Karabakh conflict from the risky 5 % of territorial conflict assumed as unsolvable (Ayunts, Zolyan, and Zakaryan 2016, 4). Since individuals differ in their personal experiences of intercultural exchanges and contacts, they also differ in what cultural element they choose to adopt and internalize. However, most recent pivotal studies have proven that the territorial rivalry between Armenian and Azerbaijani youths of Moscow, as well as the role of their different ethnic identities and cultures, does not affect negatively their human relationships. Interviews and discussions held in 2006-07 have pointed out that the existing tendencies of Armenians and Azerbaijani mourning and its social influence driven by collective trauma are much lower than in those groups of Armenians and Azerbaijanis living the Caucasian young republics. According to the survey conducted in Russia, ethnic identity seems to be not a concern because not eternally influenced and emotionally loaded in political rhetoric and propagandistic arguments about the atrocities of the Other (Savin, 2015) and the reference about their ethnicity seems to have not an important quality beside the brainwashing emotions by political power.

CONCLUSION

Although the Nagorno-Karabakh rivalry is academically tagged as frozen conflict, such definition does not catch the real state of affair within the current lack of definitive solutions and political wills. Yet, this "no-war-no-peace" limbo challenges the sphere of human security for those locals living alongside the Line of Contact (LoC) on both sides, as well as the future of both Caucasian young republics in terms of political and economic development.

The question about the Other seems definitely to represent a challenging conflict (trans-)formation paradigm from the classical approaches upon conflict resolution mechanisms. According to the Nagorno-Karabakh issue, the role of Other may serve as a conflict transformation approaches to the future peace agreement among embittered adversaries. Definitely, future prospects for conflict transformation should focus more at the future human relationships, which may theoretically transform the sense of Armenian-Azerbaijani Self alongside the examination of the conditioned and motivated biases of the Self towards the Other. Over Nagorno-Karabakh, future forms of involvement with the Other will be not reducible to simply binary opposition "us-against-them", nowadays in the political and social mainstream manifested in traumatic acts of self-identification against the Other, but as a new relation between self-ness and Otherness based on intricate constellation of interconnectedness (Glavanakova 2016, 19).

The mirror of wrenching situations shattered and battered by two-decades-war, in which it might find such answers from history and it might find also find again our humanity through reconciliation, hence repentance, forgiveness, healing and renewal, that in the first instance nation-building may be at the heart of the communitarian vocation of Nagorno-Karabakh in the future. 

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THE ADMISSION OF NEWLY CREATED STATES TO THE MEMBERSHIP OF THE UNITED NATIONS: THE CASE OF REPUBLIC OF MACEDONIA

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Abstract

The international law which regulates the formation, functioning and legal capacity of international organizations, and also the international law in the United Nations system, are always relevant and subject to progressive development, because the international relations are in constant dynamics. Each newly created state has one major foreign policy goal during its first years of formation or after obtaining independence – admission to the membership of the United Nations. That is because the decision of admission to the membership of the UN guarantees the country's statehood which can no longer be questioned. The country becomes part of a global community of nations – the international community. Therefore, the present paper is a qualitative research regarding the admission of new states to the international community, and the decision-making process concerning the admission of new Member States to the UN.

Key words: United Nations; Security Council; General Assembly; international law; Republic of Macedonia

INTRODUCTION

The international community (henceforth referred to as: the community) presents wide space for implementing the international legal norms and procedures, space for creating institutions and organizations such as the United Nations (henceforth referred to as: UN), NATO, OSCE, Council of Europe etc. Those institutions are directing and organizing the legal, political, economic, defense and security relations among states and other subjects in terms of the international relations. The community itself creates material conditions for the survival of the states. In that sense, the community creates a system of

legal norms, activities, and procedures, which are used by the states and international organizations for accomplishing their own goals and the goals of the community as a whole.

The subjects, that are part of the community, are: states, their alliances, international organizations, international political movements, the human beings, transatlantic corporations etc. They formulate their requests, proposals, initiatives, actions, and resolve their mutual disputes (Frckoski et al. 2012, 109). The everyday communication which takes place in international relations between subjects, communication which is guided by the rules of international law and diplomacy, communication which gives contribution to the development of the community as a whole, is defined as international policy.

The sovereign equality of states still represents a fundamental principle in modern international law. The sovereignty *per se* is expressed in several ways:

- Sovereign equality at international level;
- Political independence;
- Territorial integrity;
- Exclusive authority over its own territory and population;
- Protection from external interference in the internal affairs;
- Freedom in arranging the socio-political and economic system;
- Obligation to respect and implement the international *ius cogens* norms and those legal norms which the state freely agreed to respect and apply;
- Right of immunity for their diplomatic and consular representatives abroad;
- Right of immunity concerning decisions of foreign courts for civil legal disputes made by the capacity which the sovereign state possesses (Frckoski et al. 2012, 24-25).

However, this sovereign equality of states is more a *de iure* category, since there is a factual inequality between them. They are unequal in terms of the power they possess (diplomatic, military, economic, and cyber power). Precisely the role of power appears as final arbitrator in the relations between the states, or what even the Greek historian Thucydides said – "the strong ones do what they can, the weak ones accept what they must to" (Maleski 2000, 31).

The successful promotion of state interests in international context depends on the state's power. The horizontal structure of that context dictates the game rules. The first rule is a self-help game, in which increasing power and wealth are primary objectives pursued by the state. Also here is the rule that there is no common international interest capable of directing the various national interests of states. Here we could add the economic inequality, cultural differences and practices, the desire for domination between states, and the absence of effective mechanisms for conflict resolution.

Although the principle "everyone for themselves" dominates basically, there is continuous process of cooperation between states and also a certain degree of mutual trust. The collaboration creates space for establishing international organizations, so today we have the UN, NATO, OSCE, the Council of Europe, the World Bank, the International Monetary Fund, the European Union (henceforth referred to as: EU) as a *sui generis* community of sovereign states, etc.

The very existence of the state is firstly based on facts, and then on law. To be recognized as a full member of the community, the state must cumulatively meet several conditions according to Article 1, Montevideo Convention on the Rights and Duties of States. It is stated that "the state as a person of international law should possess the following qualifications: a) permanent population; b) defined territory; c) government; and d) capacity to enter into relations with the other states."

The integration of a new state in the community is done by way of individual and collective recognition by existing states. At their own discretion and assessment they decide whether the new state is able and willing to perform all duties assigned to it as a subject in international law, and whether it will be a trusted and loyal member of the community or not. Consequently, the ability and willingness of the new state to respect the international law constitutes the main criterion of statehood in terms of international law. The existing states are decisive for granting *capacitas iuridica* in international law, based on the main criterion of statehood.

THE ADMISSION OF NEW MEMBERS TO THE UNITED NATIONS

The admission of a new member to the UN assumes that the candidate for admission represents a state, or according to Article 4(1) of the UN Charter "membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and are able and willing to carry out these obligations." (Petreski 2014, 118).

Thus, following the decision of the General Assembly for admission of a candidate to the membership of the UN, based on an earlier recommendation by the Security Council (under Article 4 (2) of the Charter), a decision that is binding even for those states that voted against the admission, the legality of intergovernmental obligations, contained in the Charter, could no longer be contested by any member in their relations with the Member State which had just received admission to the UN.

The reliability of the new entity as a partner in international relations is the decisive criterion of statehood in the sense of international law. The existing states base their decision on whether to recognize the entity under international law on their assessment in this respect. Article 4, paragraph 1 of the UN Charter explicitly mentions "the ability and willingness, in the judgment of the Organization, to carry out international obligations as a criterion for admission of new members to the United Nations." All other requirements for statehood[1] according to international law, in particular the existence of effective power of control over a territory and its inhabitants, are derived from this one decisive criterion of the necessary ability and readiness to act in accordance with international law and, as such, take on the character of international standards.

On the one hand, the phrase "able and willing to carry out these obligations" (under Article 4 (1) of the Charter) reinforces international law's claim to being a *legal* system. In addition, it is orientated towards the requirements of international practice, in which legal personality is conferred according to the state's practical interests in international relations.

[1] Practically, the three marks that characterize the state are: defined territory, permanent population, sovereign and effective power and capacity to enter into relations with other states. All together they form the statehood.

In accordance with Article 4 (2) of the UN Charter, the final decision as to whether an applicant fulfills the substantive requirements for admission, as laid down in Article 4 (1) of the Charter – "whether it is a state [defined territory, permanent population, sovereign and effective power and capacity to enter into relations with other states] that is peace-loving, that accepts the obligations contained in the Charter and is able and willing to carry out these obligations" – is made by the General Assembly upon the recommendation of the Security Council. The UN intentionally decided against implementing a system of accession to the Organization under which all states can become members by way of unilateral declaration. The admission procedure contained in the Charter ensures that the principal organs of the United Nations retain absolute power in the procedure.

The UN organs that have power to make such a decision – admission of newly created states to the membership of the United Nations, and indirectly the Member States which are represented in these organs are the so called "kings" of the procedure for admission in accordance with Article 4 (2) of the Charter. So the claim that the admission to membership in the UN can be conducted in accordance with procedural law (the right to submit a lawsuit) against the will of the organs responsible for the decision-making process – or at least against the will of a permanent member state of the Security Council is not true. A state cannot even appeal the decision that will be taken in connection with its application for admission.

The International Court of Justice (ICJ) recognizes the power of final judgment of the Security Council and the General Assembly. Thus, the interlocutory judgment of the ICJ in the Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina vs. Federal Republic of Yugoslavia) of 11 July 1996 is based on the assumption that a decision to admit a new state is binding on all members and cannot be contested under procedural law. It is stated:

> (…) According to Yugoslavia, Bosnia and Herzegovina was not qualified to become a party to the convention (…) The Court notes that Bosnia became a Member of the United Nations following the decisions adopted on 22 May 1992 by the Security Council and the General Assembly, bodies competent under the Charter. Article XI of the Genocide Convention opens it to "any Member of the United Nations"; from the time of its admission to the Organization, Bosnia-Herzegovina could thus become a party to the Convention (…) (ICJ Reports (1996) 596, at 611, para. 19).

The procedure for admission

The political aspect of the procedure for admission derives from Article 4, para. 2. It requires recommendation from the Security Council (henceforth referred to as: SC), which is then effected (confirmed) by voting in the General Assembly (henceforth referred to as: GA) for the admission of new state in membership of the UN. The term "based on own judgment and discretion of the Organization", contained in Article 4, para. 1 of the Charter, reflects the political interests of certain Member States that come into play.

The UN practice shows that permanent members of the SC put (*liberum*) *veto*[2] or support requirements for membership in accordance with their political interests. The term "peace-loving state" has undergone various political interpretations. Thus, at the conference in San Francisco in 1945, the Soviet Union opposed the inclusion of Argentina as a founding state of the UN. It could not qualify as a peace-loving state, because of its relations with the Axis powers (Rome, Berlin, Tokyo) until the last days of World War II. In those days, Argentina shifted its support to the allies, because of the appa-rent victory of the anti-fascist coalition.

Argentina finally was recognized as a founding state of the UN, based on the compromise (mutually-acceptable solution) reached during the conference. In 1947, the Soviet Union vetoed (again) the admission of Ireland and Portugal to the membership of the UN. Its reasoning was that these two nations have remained neutral during the World War II, hence they could not be regarded as peace-loving states (Petreski 2014, 113). An attempt by the GA to bypass this power of the SC in determining the admission of new states to the membership of the UN was defeated in 1950. The International Court of Justice found that the GA can only receive a new state to the UN membership prior to "favorable recommendation" received by the SC (Competence of Assembly Regarding Admission to the United Nations, Advisory Opinion, ICJ Reports 1950, 10). However in a dissenting opinion, Judge Alvarez drew attention to the new international law and held:

> (…) Even if it is admitted that the right of veto may be exercised freely by the permanent Members of the Security Council in regard to the recommendation of new members, the General Assembly may still determine whether or not this right has been abused and, if the answer is in the affirmative, it can proceed with the admission without any recommendation by the Council (…) a State whose request for admission had been approved by all the Members of the Security Council except *one* and by all the Members of the General Assembly would be unable to obtain admission to the United Nations because of the opposition of a *single* state. In that way, one single vote would be able to frustrate the votes of all the other Members of the United Nations and that would be *ad absurdo*. (Dissenting Opinion by M. Alvarez 3 March 1950, 20).

The above dissenting opinion of Judge Alvarez says a lot about the bottleneck constituted by the use of vetoes in the admission process. The recent practice of the United Nations goes in favor of this claim. Notably, judging from the massive support and ovation that greeted the speech of the Palestinian Authority President Mahmoud Abbas at the 66th Session of the General Assembly, it will be correct to conclude that Palestine would have been admitted as a UN member if the General Assembly had the opportunity to vote. However, the issue regarding the Palestine membership has never come before the General Assembly, because the Security Council has not deliberated on it due to a US threat of veto. It can be concluded that the full procedure for admission of newly created states to the membership of the UN is full of political considerations and interests. Hence, the legal criteria enshrined in the UN Charter are not always followed during the admission process.

[2] *Liberum veto* means a *veto* exercised by a single member (as of a legislative body) under rules requi-ring unanimous consent.

THE REPUBLIC OF MACEDONIA: MEMBERSHIP IN THE UNITED NATIONS AND THE NEGOTIATIONS ON THE "NAME ISSUE"

In the mid-1992, the Macedonian state leadership intensified the communication with the US administration at that time, and with the UN Secretary General Boutros Boutros-Ghali. The goal was to make an attempt for accession of Republic of Macedonia (henceforth referred to as: Macedonia), as newly created state, to the world organization after blocking the accession to the European Community – a blockade made by Greece (officially the Helenic Republic). The Macedonian president Kiro Gligorov, submitted a request for membership of Macedonia to the United Nations by the letter from 30 July 1992. Six months later, the Greek Minister of Foreign Affairs highlighted the position of his government, directing sharp objections to Macedonia's membership in the UN due to unresolved issues between the two countries. Greece in particular demanded abandonment of the denomination "Republic of Macedonia" as a name of the Macedonian state. The same is perceived from a conversation between the former Prime Minister of Greece, Constantine Mitsotakis, and the former US President, George H. W. Bush, held in the Oval Office of the White House on 17 November 1992. The Greek Prime Minister outlines:

> (…) An issue most close to our Greek hearts is the one of Skopje/Macedonia. We will be discussing this in Edinburgh. We want this republic to exist and we have taken several initiatives in this sense. What we cannot accept is their official name to include the term *Macedonia* (…) Another problem I ask for US to help to prevent the admission of this country in the UN because if they are admitted, this discussion is valueless. We will see what we can do – answers the former Secretary of State, Lawrence S. Eagleburger. It is very important. It would be a tragedy. I cannot afford it. I do not exaggerate, I try to compromise. But if this happens this would be a tragedy for Greece and for me – The Greek Prime Minister added. (Memorandum of Conversation 1992).

At this period, the Minister of Foreign Affairs of Great Britain informed the authorities in Skopje that his state along with France and Spain formally asked the UN admission of the newly created state to the membership of the Organization under the reference "Former Yugoslav Republic of Macedonia / FYROM". On 7 April 1993 the Security Council adopted the resolution 817 (1993). It notes that "the applicant fulfills the criteria for membership in the United Nations laid down in Article 4 of the Charter (peace-loving state which accepts the obligations contained in the Charter, also capable and willing to fulfill the obligations)." (Petreski 2014, 118). It also notes "the difference that has arisen over the name of the state, which needs to be resolved in the interest of the maintenance of peaceful and good-neighborly relations in the region." (Petreski 2014, 118). The resolution also:

> (…) Recommends to the General Assembly that the State be admitted to membership in the United Nations, this State being provisionally referred to for all purposes within the United Nations as "the former Yugoslav Republic of Macedonia" pending settlement of the difference that has arisen over the name of the state (…) (S/RES/817 1993).

So, on 8 April 1993 Republic of Macedonia became the 181th member state of the United Nations under the interim reference "FYROM". It was done most severe violation of international law, violation of the UN Charter and precedent in the UN legal system because the constitutional name of the state is not a (legal) requirement for membership in the UN or in any other international organization.

On 18 June 1993 the Security Council passed another resolution 845 (1993) calling on the two parties – Republic of Macedonia and Greece "to continue their efforts under the auspices of the Secretary-General to arrive at a speedy settlement of the remaining issues between them" (S/RES/845 1993).

In accordance with Resolution 845 (1993) of the Security Council, on 13 September 1995 in New York, the Interim Accord was signed, which came into force on 13 October 1995. This interim agreement constitutes legal framework for stabilizing the bilateral relations between Republic of Macedonia and Greece. The minister Karolos Papoulias was representing the Party of the First Part (Greece), the minister Stevo Crvenkovski was representing the Party of the Second Part (Republic of Macedonia) in witness whereof by Cyrus R. Vance (Special Envoy of the Secretary General of the United Nations). Vance was also UN Special Representative in the negotiations on the "name issue". According to Article 5, paragraph 1 of the Interim Accord:

> (…) The Parties agree to continue negotiations under the auspices of the Secretary-General of the United Nations pursuant to Security Council resolution 845 (1993) with a view to reaching agreement on the difference described in that resolution and in Security Council resolution 817 (1993).

The contracting parties recalled the principles of the inviolability of frontiers and the territorial integrity of the states incorporated in the Final Act of the Conference on Security and Cooperation in Europe, signed in Helsinki, bearing in mind the provisions of the UN Charter and, in particular, those referring to the obligation of the states to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state. The Republic of Macedonia and Greece agreed that their mutual interest is maintenance of international peace and security in their region, confirming the existing frontier between them as an enduring international border. Also recalled was obligation not to intervene, on any pretext or in any form, in the internal affairs of the other. Both parties agreed to respect very important obligation stipulated in Article 11, paragraph 1 of the Interim Accord (1995, No. 32193):

> (…) Upon entry into force of this Interim Accord the Party of the First Part (Greece) agrees not to object to the application by or the membership of the Party of the Second Part (Republic of Macedonia) in international, multilateral and regional organizations and institutions of which Greece is a member; however Greece reserves the right to object to any membership referred to in such organization or institution differently than the interim reference "the former Yugoslav Republic of Macedonia (FYROM)" in accordance with paragraph 2 of the United Nations Security Council resolution 817 (1993).

Taking into consideration the oldest legal principle that applies in international law of treaties – *pacta sunt servanda* (contracts must be fulfilled / agreements must be kept), according to the Article 26 of Vienna Convention on the law of treaties - "every treaty in force is binding upon the parties to it and must be performed by them in good faith". It means that Greece *must not object* the NATO membership of Republic of Macedonia under the interim reference. The same goes for Macedonia's accession to EU. However, that is exactly what happened. At the Summit of the North Atlantic Council of NATO which took place in Bucharest, Romania on 3 April 2008, Greece vetoed the invitation for Macedonia to begin accession talks to join the Alliance even though Republic of Macedonia has met the membership criteria (legal, political, and military), confirmed by an official statement made by the President of the United States, George W. Bush, two days after the Summit, "like Croatia and Albania, Macedonia has met all the criteria for NATO membership" (International Court of Justice, Case Concerning the Application of Article 11, paragraph 1, of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece), Memorial, Volume 1, 20 July 2009, page 53). In paragraph 20 of the Bucharest Summit Declaration (3 April 2008), the Heads of State and Government of the NATO Member States agreed on the following:

> (…) We recognize the hard work and the commitment demonstrated by the Former Yugoslav Republic of Macedonia to NATO values and Alliance operations. We commend them for their efforts to build a multiethnic society. Within the framework of the UN, many actors have worked hard to resolve the *name issue*, but the Alliance has noted with regret that these talks have not produced a successful outcome. Therefore *we agreed that an invitation to the Former Yugoslav Republic of Macedonia will be extended as soon as a mutually acceptable solution to the name issue has been reached*. We encourage the negotiations to be resumed without delay and expect them to be concluded as soon as possible (…).

The role of the International Court of Justice

On 17 November 2008, Republic of Macedonia instituted proceedings before the International Court of Justice (henceforth referred to as: ICJ) against Greece for "a flagrant violation of its obligations under Article 11" of the Interim Accord. Macedonia seeks "to protect its rights under the Interim Accord and to ensure that it is allowed to exercise its rights as an independent State acting in accordance with international law, including the right to pursue membership of relevant international organizations". (ICJ, The former Yugoslav Republic of Macedonia institutes proceedings against Greece for a violation of Article 11 of the Interim Accord of 13 September 1995, No. 2008/40, 17 November 2008, page 1, para. 2). The Republic of Macedonia contends that the Hellenic Republic violated its rights under Article 11 by objecting, in April 2008, to its application to join NATO. The Republic of Macedonia contends, in particular, that Greece "vetoed" its application to join NATO because Greece desires "to resolve the difference between the Parties concerning the constitutional name of the Applicant as an essential precondition" for Macedonia's membership in the NATO. (2008, page 1, para. 4). The Applicant (Macedonia) argues that it has "met its obligations under the Interim Accord not to be designated as a member of

NATO with any designation other than the former Yugoslav Republic of Macedonia" and it affirms that "the subject of this dispute does not concern – either directly or indirectly – the difference that has arisen between Greece and itself over its name". (2008, page 1, para. 5). The Republic of Macedonia requests the Court to order Greece to:

> (…) Immediately take all necessary steps to comply with its obligations under Article 11, paragraph 1 and to cease and desist from objecting in any way, whether directly or indirectly, to the Macedonia's membership of the North Atlantic Treaty Organization and/or of any other international, multilateral and regional organizations and institutions of which Greece is a member (…) (2008, page 1, para. 5).

As a basis for the jurisdiction of the Court, Republic of Macedonia invokes Article 21, paragraph 2, of the Interim Accord of 13 September 1995 which provides that:

> (…) Any difference or dispute that arises between the Parties concerning the interpretation or implementation of this Interim Accord may be submitted by either of them to the ICJ, except for the difference between them with respect to the name of the Party of the Second Part (Republic of Macedonia), referred to in Article 5, paragraph 1.

The ICJ made its judgment on 5 December 2011. The Judgment is legally binding on the parties and no *remedium iuris* is allowed against it (it is not allowed to file a lawsuit in order to appeal the judgment). The Court finds that:

- Opposing the accession of Macedonia to NATO in the period before the NATO Summit in Bucharest, 2008, Greece violated the Interim Accord of 1995:

  > (…) In the view of the Court, the evidence submitted to it demonstrates that through formal diplomatic correspondence and through statements of its senior officials, the Respondent (Greece) made clear before, during and after the Bucharest Summit that the resolution of the difference over the name was the "decisive criterion" for Greece to accept the Applicant's (Republic of Macedonia) admission to NATO. Greece manifested its objection to the Macedonia's admission to NATO at the Bucharest Summit, citing the fact that the difference regarding the Macedonia's name remained unresolved (…) The Court therefore concludes that the Respondent (Greece) objected to the Applicant's (Republic of Macedonia) admission to NATO, within the meaning of the first clause of Article 11, paragraph 1, of the Interim Accord (…) Thus, the Court concludes that the Respondent (Greece) failed to comply with its obligation under Article 11, paragraph 1, of the Interim Accord by objecting to the Applicant's (Republic of Macedonia) admission to NATO at the Bucharest Summit. (para. 81, 83, 113).

- It is expected from Greece not to violate international law again (it is assumed by definition of its "good faith"):

  > (…) The Court does not consider it necessary to order the Respondent (Greece), as the Applicant (Republic of Macedonia) requests, to refrain from any future conduct that violates its obligation under Article 11, paragraph 1,

> of the Interim Accord. As the Court previously explained, "[a]s a general rule, there is no reason to suppose that a State whose act or conduct has been declared wrongful by the Court will repeat that act or conduct in the future, since its good faith must be presumed. (para. 168).

- Macedonia can continue to use its constitutional name in relations with Greece and within international organizations:

> (…) Article 1, paragraph 1, of the Interim Accord, provides that the Respondent (Greece) will recognize the Applicant (Republic of Macedonia) as an "independent and sovereign state" and that the Respondent will refer to it by a provisional designation (as "the former Yugoslav Republic of Macedonia"). Nowhere, however, does the Interim Accord require the Applicant to use the provisional designation in its dealings with the Respondent. On the contrary, the "Memorandum on 'Practical Measures' Related to the Interim Accord", concluded by the Parties contemporaneously with the entry into force of the Interim Accord, expressly envisages that the Applicant will refer to itself as the "Republic of Macedonia" in its dealings with the Respondent. Thus, as of the entry into force of the Interim Accord, the Respondent did not insist that the Applicant forbear from the use of its constitutional name in all circumstances (…) If the Parties had wanted the Interim Accord to mandate a change in the Applicant's use of its constitutional name in international organizations, they could have included an explicit obligation to that effect as they did with the corresponding obligations in Article 6 and Article 7, paragraph 2 (…) Based on the foregoing analysis, the Court concludes that the practice of the Parties in implementing the Interim Accord supports the Court's prior conclusions and thus that the second clause of Article 11, paragraph 1, does not permit the Respondent (Greece) to object to the Applicant's (Republic of Macedonia) admission to an organization based on the prospect that the Applicant is to refer to itself in such organization with its constitutional name. (para. 95, 96, 101).

- All allegations of Greece that Republic of Macedonia had violated the Interim Accordwere rejected:

> (…) The Court finds no breach by the Applicant of the second clause of Article 11, paragraph 1 (...) the Court concludes that the Respondent (Greece) has not met its burden of demonstrating that the Applicant (Republic of Macedonia) breached its obligation to negotiate in good faith, according to Article 5, paragraph 1 of the Interim Accord "the Parties agree to continue negotiations under the auspices of the Secretary-General of the United Nations pursuant to Security Council resolution 845 (1993) with a view to reaching agreement on the difference described in that resolution and in Security Council resolution 817 (1993)." (…) the Court concludes that the Respondent (Greece) has not discharged its bur-den to demonstrate a breach of Article 7, paragraph 3, by the Applicant (Republic of Macedonia). Article 7, paragraph 3, provides: "if either Party believes one or more symbols constituting part of

> its historic or cultural patrimony is being used by the other Party, it shall bring such alleged use to the attention of the other Party, and the other Party shall take appropriate corrective action or indicate why it does not consider it necessary to do so. (para. 126, 138, 159, 154).

It means that Republic of Macedonia did not breach its obligations under Article 7, paragraph 3 of the Interim Accord by renaming the airport "Petrovec" after "Alexander the Great". It can be concluded that although the Court's judgment does not directly concern third countries or NATO or EU themselves, the Court found that the opposition of Greece before and during the NATO Summit in Bucharest constituted a violation of international public law. It would be appropriate for the NATO Member States to review their decision made at the Summit in Bucharest, but at the last NATO Summit held in Warsaw, Poland (8-9 July 2016) the decision from Bucharest Summit meeting was repeated:

> (…) We reiterate our decision made at the 2008 Bucharest Summit and reiterated at subsequent Summits that NATO will extend an invitation to the Former Yugoslav Republic of Macedonia to join the Alliance as soon as mutually acceptable solution to the name issue has been reached within the framework of the UN. Given concerns over political developments in the Former Yugoslav Republic of Macedonia, which have taken the country further away from NATO values, we urge all political leaders in the country to fully implement their commitments under the Przino Agreement of June/July 2015, as the framework for a sustainable solution to the political crisis (…) We appreciate the Former Yugoslav Republic of Macedonia's commitment to international security, as demonstrated by its steadfast contribution to our operations, and its commitment to the NATO accession process. (para. 114).

The implementation of the ICJ Judgments is left to the states to which they refer, on the basis of their democratic awareness of respect for international law and the implementation of international obligations. A key disadvantage of the International Court of Justice is the lack of appropriate enforcement mechanism for coercion upon states in order to bring into force its judgments when they are not implemented *bona fide,* based on the goodwill of the subjects in question.

A DRAFT STRATEGY: WHAT SHOULD BE DONE IN THE FUTURE?

The denomination (interim reference) "FYROM" is one of the two illegal conditions for the Macedonian accession in the UN in 1993. The second illegal condition is the obligation for negotiations on its own legal identity (the name of the state is legal identity in international legal communication, as it is the case with personal name of the individuals as subjects of law). Namely, the International Covenant on Civil and Political Rights stipulates that "everyone shall have the right to recognition everywhere as a person before the law." (Article 16). These two conditions are contrary to the advisory opinion given by the ICJ in 1948, whether it may ask specific additional requirements for admission, beyond those prescribed in Article 4 of the Charter, and voting for them. The negative response of the Court was accepted by the UN General Assembly as an interpretation of Article 4.

Republic of Macedonia should initiate (draft) resolution of the General Assembly containing the following question – whether the specific conditions for admission and status of the state are in accordance with the UN Charter? (Petreski 2014, 123). There are no legal obstacles of any kind through the UN Assembly to seek an advisory opinion from the ICJ on the legality of the additional conditions that were required in the admission of Macedonia in the UN, out of Article 4, para. 1 of the Charter. The procedure for giving advisory opinions is set out in Article 65-68, Chapter 4 – Advisory opinions of the Statute of ICJ:

> (…) The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request (Article 65, para. 1) (…) Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question. (Article 65, para. 2).

The procedure is initiated at the request of any UN body, but mostly is made by the GA. The ICJ Advisory opinion of 28 May 1948 will be used as an argument, enclosed in the written request. Upon request of the GA the ICJ gave its opinion and answer to the following question:

> (…) Is a Member State of the United Nations which is called upon to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the UN, juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph 1, Article 4 of the Charter? (Conditions of Admission of a State to membership in the United Nations (Article 4 of Charter), Advisory Opinion of 28 May 1948).

The ICJ answered this question in the negative by nine votes to six. It was nevertheless contended that the question was not legal, but political. It was argued that these conditions represented an indispensable minimum in the sense that political considerations could be superimposed on them, and forms an obstacle to admission. The conditions in Article 4 are exhaustive and no argument to the contrary can be drawn from paragraph 2 of the Article which is only concerned with the procedure for admission. For these reasons, the Court answered the question put to it in the negative. It means that in case of admission of a newly created state to the membership of the United Nations, additional conditions beyond the UN Charter must not be requested.

The United Nations practice shows that the most of the advisory opinions of the ICJ are accepted by the Organization, so once the advisory opinion in our case is accepted the GA would have to establish the constitutional name "Republic of Macedonia" for all purposes of the UN and our membership in this multilateral giant to be continued under the constitutional name of the state.

The following should be taken into account: the draft resolution should be prepared by co-sponsor states that will help Republic of Macedonia to put the resolution on the daily agenda of the General Assembly (with contained question to the ICJ, elaborated above in

the paper) and to be voted. According to the rules of procedure of the GA, the General Committee makes decisions on which items will be placed on the daily agenda of the GA:

> (…) The General Committee shall, at the beginning of each session, consider the provisional agenda, together with the supplementary list, and shall make recommendations to the General Assembly, with regard to each item proposed, concerning its inclusion in the agenda, the rejection of the request for inclusion or the inclusion of the item in the provisional agenda of a future session. (Rule 40 – Functions of the General Committee, Rules of Procedure of the General Assembly A/520/Rev. 17 2008).

Under procedural law, in the General Committee and in the GA, decisions are made by simple majority (of the members present and voting):

> (…) Decisions of the General Assembly on questions other than those who are considered as important, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting. (Rule 85 – Simple majority, A/520/Rev. 17)
> (…) For the purposes of these rules, the phrase "members present and voting" means members casting an affirmative or negative vote. Members which abstain from voting are considered as not voting. (Rule 86 – Meaning of the phrase "members present and voting", A/520/Rev. 17).

According to rule 125 [85] – Majority required, "decisions of committees shall be made by a majority of the members present and voting". With the full support of the co-sponsor states, taking into consideration the fact that Republic of Macedonia has been recognized under its constitutional name by 134 UN Member States, we will not have problems of any kind with passing the draft resolution in the GA. Despite the Greek abstaining from voting or casting a negative vote, we will have favorable outcome, even if only half of those 134 states cast an affirmative vote for passing the resolution. The resolution will be adopted. Co-sponsor states could be some of the states of former Yugoslavia, Turkey for example etc. It would be also favorable to gain the support of the five permanent Member States of the SC in order to obtain diplomatic weight of the resolution. This part of the strategy must be conducted in the strictest secrecy, and these co-sponsors will eventually be those states which maintain closest relations with Republic of Macedonia.

CONCLUSION

The integration of a new state in the international community is done by way of individual and collective recognition by existing states. At their own discretion and assessment they decide whether the new state is able and willing to perform all duties that belong to it as a subject in international law, and whether it will be a trusted and loyal member of the community or not. Consequently, the ability and willingness of the new state to respect international law constitutes the main criterion of statehood in terms of international law. The existing states are decisive for granting *capacitas iuridica* in international law, based on the main criterion of statehood.

The full procedure for admission of newly created states to the membership of the UN is full of political considerations and interests. Hence, the legal criteria enshrined in the UN Charter are not always followed during the admission process. In case of admission of a newly created state to the membership of the United Nations, additional conditions beyond the UN Charter must not be requested. 

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GENERAL CONCEPT OF EXTRADITION AND THE TRIBUTE OF HUMAN RIGHTS IN THE REPUBLIC OF MACEDONIA

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Abstract

The theories behind extradition, the rule of "prosecute or extradite" and the idea of using due diligence when prosecuting and punishing a criminal offender need to be explored in details, relying on both customary international law and treaty based law. Luring fugitives into international waters or cooperating with another state in the frames of the process of extradition are options which may help in bringing fugitives before justice. Republic of Macedonia among other states has recognized the need for cooperation in criminal matters through the use of extradition as one of the earliest forms of inter-state cooperation in any domain. This paper explains how extradition is governed in the internal legislation of the Republic of Macedonia and the necessary changes which have been made in order to increase the effectiveness of extradition and to preserve human rights from possible violations.

Key words: extradition; criminal offender; prosecution; extradition agreement; human rights

INTRODUCTION

The level of international judicial cooperation in the criminal area in recent decades is now on a scale which has long surpassed the classical framework that governs extradition. The Republic of Macedonia has for some years initiated the process of Euro-integration which is a necessary alignment of Macedonian criminal legislation with the laws in developed European countries and the need to implement the provisions of the most important international conventions ratified by the Republic in recent years and now they have become an integral part of the legal order. Along with the development of the integration of European countries and their mutual cooperation, the emergence of European criminal law and the establishment of international criminal courts, on the one hand and the expansion of crime on the other hand, there is a considerable increase in requests for mutual cooperation between states (Stefanovska 2012).

First of all, extradition as a way of international cooperation between states with a sole purpose to bring criminal offenders before justice has been regulated with Chapter XXX – Procedure for giving international legal aid and enforcement of international agreements in criminal matters and Chapter XXXI – Procedure for extradition of accused and convicted offenders and the procedure for transfer of convicted offenders from the Code for Criminal Procedure (1997). In this chapter it was provided that extradition will be conducted in accordance with the provisions of this law if it is not contrary with the European Convention on Extradition and other international agreements ratified in accordance with the Constitution. The first and the most important assumption for extradition among others, was that the person cannot be/must not be a citizen of the Republic of Macedonia, having in mind that the national exceptional rule applied in a very strong form (Article 510 1997).

The main problem that appeared is connected with the fact that the Code covers just a small part of the provisions regarding extradition and the provisions from international conventions and additional protocols.

Because of the above mentioned, there was a need to bring a completely new law to regulate and cover the whole procedure of extradition among other international procedures for cooperation between states. The new Law on International Cooperation in Criminal Matters (2010) is written in the spirit of respecting the standards determined and supported by the Council of Europe and the most important is that the Law guarantees an appropriate level of international cooperation in criminal matters and regulates the procedure of extradition, promising an effective fight against the criminal.

The struggle against transnational terrorism in a way of extraditing criminal offenders for the committed crimes was a main point for constitutional changes in the highest normative act of the Republic of Macedonia. With the constitutional changes it has been provided: "A citizen of the Republic of Macedonia may neither be deprived of citizenship, nor expelled or extradited to another state, except on the basis of ratified international agreement or with a court decision" (Decision No.07-2055, 2011).

In connection with the procedure of extradition of aliens, it must be mentioned Article 29 of the Constitution which prescribes: "the extradition of aliens can be carried out only on the basis of a ratified international agreement and on the principle of reciprocity. Aliens cannot be extradited for political criminal offences. Acts of terrorism are not regarded as political criminal offences" (Article 29 1991).

TRANSNATIONAL FIGHT AGAINST TERRORISM AS AN INSTRUMENT FOR CONSTITUTIONAL CHANGES

The transnational dimension of terrorism, a direct result of the increasing mobility of people and goods, is exacerbated by the increasing ease with which information circulates worldwide. In this increasingly interdependent world, no country can tackle terrorism effectively in isolation and cooperation among states to prevent and punish acts of terrorism is therefore of paramount importance. The ability of states to assist each other quickly and efficiently is no longer an optional bonus but an absolute necessity if they are to combat terrorism effectively. The international counter-terrorism conventions and protocols provide the essential legal tools and mechanisms for national authorities to carry out cross-border investigations and to eliminate safe havens for suspected terrorists. These

treaties focus on international cooperation with regard to criminal justice and are designed to facilitate investigation and prosecution when offences are of an international nature. This does not include additional forms of cooperation in the fight against terrorism, such as the exchange of information in the interests of national security, the identification of crime trends and the study of the scope and nature of terrorist organizations. Of the various forms of international cooperation in criminal matters that are recognized in states' national practice and doctrine, extradition and mutual legal assistance form the main focus of the treaties (UNODC 2012, 1).

One very important question that arises in the fight against international terrorism is how states incorporate international instruments into their internal legal systems? A difference can be made between monist and dualist systems. Some states follow a "dualist" approach, whereby international law and national law are considered two separate legal systems and a law is required for the incorporation of each international obligation in national legislation. In "monist" countries, the ratification and subsequent publication of a treaty automatically incorporates the provisions of that treaty in national law. The Constitution of the Republic of Macedonia in Article 118 prescribes: "International agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law" (Article 118 1991). This means, that after their ratification, international agreements become part of the internal legal system and have equal force as the domestic agreements and legal provisions.

After the break-up of the Socialist Federal Republic of Yugoslavia, the Republic of Macedonia as a new sovereign state has followed the example of Slovenia, Croatia, Bulgaria and Montenegro and in 2011 the Assembly prepared a draft-amendment to the Constitution that was submitted to public debate. According to this matter, the Constitution refers to the fact that: "A decision to initiate a change in the Constitution is made by the Assembly by a two-thirds majority vote of the total number of Representatives. A draft-amendment to the Constitution is confirmed by the Assembly by a majority vote of the total number of representatives and then submitted to public debate" (Article 131 1991).

The draft-amendment XXXII to the Constitution was prepared in order to allow extradition of nationals only on the basis of ratified bilateral agreements, following a court decision. Many comparative experiences and internationals standards and instruments were used such as:

- United Nations Convention against Transnational Organized Crime (2002), ratified by the Republic of Macedonia on 12 January 2005;
- United Nations Convention against Corruption (1999), ratified by the Republic of Macedonia on 13 April 2007;
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the proceeds from Crime and on the Financing of Terrorism (ETS no.198 2005), ratified by the Republic of Macedonia on 27th May 2009;
- Criminal Law Convention on Corruption (ETS no.173 2002), ratified by the Republic of Macedonia on 28th July 1999 and
- Convention on Cybercrime (ETS no.185 2001), ratified by the Republic of Macedonia on 15th September 2004.

NON-EXTRADITION OF NATIONALS: SETTING BOUNDARIES IN ORDER TO ACHIEVE JUSTICE

Non-extradition of nationals is a principle that is well known in the extradition practice all over the world and dating from medieval times. Now with considerable changes in the international legal system, in international criminal law there follows a change in non-extradition of nationals as one of extradition principles, providing an opportunity for states to clarify the complicated status of a certain number of their inhabitants, by attaching a declaration defining the meaning of the term "nationals" for the purposes of the application of the European Convention on Extradition (Elezi, Georgieva and Ristoska 2010, 4).

The European Convention on Extradition (CETS 24 1957) prescribes: "A Contracting Party shall have the right to refuse extradition of its nationals. Each Contracting Party may, by a declaration made at the time of signature or of deposit of its instrument of ratification or accession, define as far as it is concerned the term "nationals" within the meaning of this Convention" (Article 6 1957).

Actually if we look the declarations and reservations made to the provisions of the Convention, we can notice that many states made declarations to Article 6 concerning the refusal of extradition of nationals and on that way they are protecting the human rights of their own citizens. Andorra, Armenia, Azerbaijan, Bulgaria, Croatia, Estonia, Germany, Greece, Liechtenstein, Luxembourg, Moldova, Montenegro, Poland, Russia, San Marino and Ukraine made declarations in respect of Article 6. The Republic of Macedonia is also in this group of states which do not allow extradition of its own nationals, but this declaration should be amended in respect of the Constitutional changes. (Reservations to ECE 1997) Romania has an interesting declaration by which extradition of own national is allowed, but only in strict conditions. France has also an interesting declaration made to Article 6 saying: "extradition shall be refused when the person sought had French nationality at the time of the alleged offence" (Declaration to the ECE 1986). The Government of Georgia reserves the right to decide on the extradition of its nationals on the basis of reciprocity and to refuse their extradition on the grounds of public morality, public policy and State security.

The principle of non-extradition of citizens is more often a state policy regarding its nationals, then a right that the State provides for its nationals. Republic of Macedonia before several years applied the rule of non-extradition of citizens as a state policy rather than human rights. This provision, however, made huge problems because criminal offenders were protected and there was no possibility of their extradition for extraditable crimes committed in other states. In order not to make confusion between the principle of non-extradition of nationals and guaranteed human rights, Republic of Macedonia made a deviation from the no exception rule by adopting the Amendment XXXII of the Macedonian Constitution (Amendment XXII to Const. 2011) with which extradition is allowed on the basis of ratified bilateral agreements and with a court decision. With this amendment, dual citizenship will no longer be an obstacle for extradition and avoiding justice.

MACEDONIAN CHANGES IN LEGISLATION TOWARDS DUAL CITIZENSHIP AND ALLOWING EXTRADITION

Before recent changes, the judicial system of the Republic of Macedonia allowed criminals with dual citizenship to live as free citizens in other states, although they were persecuted and wanted to serve sentences for committed crimes. On this way, the criminals used the weaknesses of the system and with having dual citizenship they managed to escape justice. Non extradition of citizens or the 'nationality exception' rule was not only a common practice for the Republic of Macedonia, but also all Western Balkan countries where dual citizenship was used to avoid extradition allowed and prescribed by the constitution, so this means that the legal system allowed the criminals with dual citizenship to leave as free citizens, although there were international arrest warrants against them.

The Constitution of the Republic of Macedonia contained the most restrictive provision related to extradition of the country's nationals which meant that the country had a full nationality exception engrained in its Constitution (Dzankic 2013, 12).

Dual citizenship is one of the means that criminal offenders use in order to avoid enforcement of criminal and legal sanctions and on that way the non exceptional rule was compromised. Constitutional changes are not a way for limiting or decreasing the basic human rights and liberties of citizens, but an opportunity to protect and raised them to a higher level. Every offender who committed a crime should be subjected to criminal responsibility, so the dual citizenship must not be used as an instrument to avoid criminal responsibility and appropriate sanctions in accordance with the law. The purpose of these constitutional changes was to decrease, but not to eliminate the constitutional obstacle for extradition of citizens to other states. With this a possibility could be opened for concluding bilateral extradition agreements not only with the Balkan countries, but also with other countries in the world. With the prescribing of the extradition of nationals, the countries usually provide an opportunity for prosecuting nationals for crimes committed abroad, by giving the national law an extraterritorial competence. This principle is known as the active personality principle and its main justification is in the fact that jurisdiction over crimes committed by nationals abroad is necessary to prevent such crimes and criminals from escaping prosecution. Thus, the active personality principle, seen as a remedy against the complete frustration of criminal justice and the impunity of an offender, usually follows the nationality exception rule. The number of criminal offenders who escaped justice from Republic of Macedonia should not be underestimated. The suspected criminals' freedom is secured, oddly enough, by official documents. Thanks to their dual citizenship, criminals from the Balkans can simply cross the border to another country whose passport they hold whenever they fear imminent arrest. They might still be detained there, but they may not be delivered across the border since the transfer of citizens to foreign law-enforcement agencies was prohibited.

From the above mentioned a question can be raised why there are several cases of famous criminal offenders who are not still extradited to Republic of Macedonia although all preconditions required by the law and international and bilateral agreements were fulfilled and all necessary guarantees have been given that their human rights will not be violated. What will happen with the human rights of the victims of those criminal offenders who violated their human rights while committing a crime? Is Republic of Macedonia ready to go step ahead and conduct the extradition procedure till end?

HOW THE LAW ON INTERNATIONAL COOPERATION IN CRIMINAL MATTERS GOVERNS THE PROCEDURE OF EXTRADITION

The main purpose why the new Law on International Cooperation in Criminal Matters was enacted is the necessity for international cooperation between states in preventing crime and the fact that procedures which were expensive and slow will be replaced with simpler, efficient and more economic ones. The Republic of Macedonia, more precisely the Ministry of Justice, has implemented continuous reforms which will enable the effective application of the EU measures in this area. The ratification process is completed for all the relevant international instruments, conventions and their additional protocols in the area of international cooperation in criminal matters adopted by the Council of Europe A solid national legal framework is established which aims to advance the cooperation in the area of criminal matters, considering the provisions of the Law on International Cooperation in Criminal Matters (Ministry of Justice 2013, 3). The Law has exceptional importance and represents a precondition for successful cooperation between the Republic of Macedonia and the European Union's Judicial Cooperation Unit (EUROJUST 2013). The discussion on the establishment of a judicial cooperation unit was first introduced at a European Council Meeting in Tampere, Finland, on 15 and 16 October 1999, attended by heads of state and government. This meeting was dedicated to the creation of an area of freedom, security and justice in the European Union, based on solidarity and on the reinforcement of the fight against trans-border crime by consolidating cooperation among authorities. To reinforce the fight against serious organized crime, the European Council, in its Conclusion 46, agreed that a unit (Eurojust) should be set up, composed of national prosecutors, magistrates, or police officers of equivalent competence, detached from each Member State according to their own legal systems. On 14 December 2000, on the initiative of Portugal, France, Sweden and Belgium, a provisional judicial cooperation unit was formed under the name Pro-Eurojust, operating from the Council building in Brussels. National Members were then called National Correspondents. This unit was the forerunner of Eurojust, the purpose of which was to be a sounding board of prosecutors from all Member States, where Eurojust's principles would be tried and tested. Pro-Eurojust formally started work on 1 March 2001 under the Swedish Presidency of the European Union

The cooperation between the Republic of Macedonia and EUROJUST and ratification of the European Convention on Mutual Assistance in Criminal Matters by the Republic of Macedonia in 1999 (CETS No.030 1959) was a solid base and inevitable component for the new Law on International Cooperation in Criminal Matters together with the incorporated provisions from the European Convention on Extradition (CETS No.024 1957) and the additional protocols which have been ratified by the Republic of Macedonia. The Law was enacted on 14 September 2010 and started to implement on 01 December 2013. According to the Law, in Article 3 it is prescribed: "international cooperation will be given in all procedures connected with criminal offences in the time of submitting the request for international cooperation in criminal matters to a judicial organ to the requesting state. International cooperation shall be given in the procedures before European Court of Human Rights, International Criminal Court when that is determined with an international agreement" (Article 3 2010).

The law contains provisions regarding the human rights standards indicating that the person whose extradition is sought may not be prosecuted, judged or subjected to any sentence or punishment or to any other measure for limiting his liberty or extradited to other state for criminal offence committed before the extradition unless the law otherwise provides. Regarding the death penalty, it is prescribed that "extradition is not permitted for criminal offences which under the law of the requesting state are punishable by the death penalty, unless the requesting state gives assurances which are considered sufficient that the death penalty will not be imposed (Article 55 2010).

Above mentioned provisions are just part of what the law should contain, having in mind the fact that the line between extradition and human rights is very thin and often subject to various confusions and misunderstandings. The question that everyone is asking – Should criminal offenders enjoy human rights?

Although criminal offenders broke the law and violated the guaranteed human rights of the victim, they still enjoy some of the guaranteed human rights from the international conventions that have been incorporated in the legal systems of many states such as the right not to be subjected to torture or inhuman and degrading treatment; right to appeal and right to a fair trial. Right to liberty and security does not apply to the criminal offenders because in most of the cases they are detained in prison while waiting for extradition.

The duty of every state is to protect its own citizens and their guaranteed human rights, but also to be sure that criminal offenders will be extradited and will receive proper sentence in the state where they committed the crime. It is clear that the state should not neglect the human rights of the criminals because they still possess inviolable rights guaranteed with the international conventions, but also every state must never forget what is her duty first of all, among other things, and that is fighting against international criminals, extraditing the criminal offenders and protecting the victims and providing them with their guaranteed human rights that have been violated by the criminal offenders.

THE INSTITUTION OF EXTRADITION AS AN INSTRUMENT FOR INTERNATIONAL COOPERATION BETWEEN THE REPUBLIC OF MACEDONIA AND OTHER STATES

The time when each country praised its own system of criminal repression and avoided cooperation with other countries has long past. Extradition is just one way of cooperation between states on an international level with the sole purpose to extradite a suspected or convicted criminal offender in order to be tried for a committed criminal offence or to serve the sentence determined by the court in a legitimate procedure. The possibility of handing over an accused person for trial to another State wishing to prosecute the individual offers an opportunity to the State on whose territory or under whose authority the person is, to fulfill its obligations to prosecute or to extradite. The role the obligation to extradite or prosecute plays in supporting international cooperation to fight impunity has been recognized at least since the time of Hugo Grotius, who postulated the principle of *aut dedere aut punire* (either extradite or punish). The effective fulfillment of the obligation to extradite or prosecute requires necessary national measures to criminalize the relevant offences, establishing jurisdiction over the offences and the person present in the territory of the State, investigating or undertaking primary inquiry, apprehending the

suspect, and submitting the case to the prosecuting authorities or extraditing, if an extradition request is made by another State.

The legal frame of the international judicial cooperation of the Republic of Macedonia consists of: national criminal legislation, bilateral agreements for international legal cooperation (which the Republic of Macedonia has signed with a large number of states) and the ratified international conventions in this area (which are an integral part of the legal system of the Republic of Macedonia.) In this connotation it must be mentioned that after the dissolution of the Socialist Federal Republic of Yugoslavia in the early 1990s, Republic of Macedonia as one of the six republics had inherited the ratification of several agreements and international conventions which were signed and ratified by the former Yugoslavia. Although the process of bringing a new legislation started, some of the laws from the former Yugoslavia were taken over as legal acts inherited from the previous federation. According to the Constitutional Law on Implementation of the Constitution of the Republic of Macedonia, Article 5 prescribes that: "the existing federal legal acts and document shall be taken over as legal acts and official documents of the Republic with the competencies of the bodies determined by the Constitution of the Republic of Macedonia. Pending the conclusion of an agreement among the sovereign states of the Socialist Federal Republic of Yugoslavia, the Republic of Macedonia may entrust the implementation of specific legal acts to the federal bodies" (Article 5 1991).

Bilateral agreements have significant influence in cooperation between states with a desire to prevent all forms of transnational crime and to raise extradition on a higher level as the best effective way for extradition of criminal offenders from the requested to the requesting state. The Republic of Macedonia has concluded several bilateral agreements in the field of extradition with the Republic of Slovenia, the Republic of Albania, Bosnia and Herzegovina, Montenegro, the Republic of Serbia, Republic of Kosovo and Croatia, but only the agreements concluded with Montenegro, Serbia and Croatia contain provisions for mutual extradition of own citizens. The Republic of Macedonia has concluded an Agreement for legal assistance in civil and criminal matters with Republic of Turkey in 1997. The latest bilateral agreement in the field of extradition, which Republic of Macedonia has concluded and signed, was with the Republic of Italy on 25 July 2016. This agreement contains provisions for mutual extradition of own citizens.

With the rest of the states from Europe, Israel, Korea and South Africa, the extradition procedure is conducted in accordance with:

1. European Convention on Extradition (opened for signature in Paris on December 13, 1957 and entered into force on April 18, 1960);
2. First Additional Protocol to the European Convention on Extradition and
3. Second Additional Protocol to the European Convention on Extradition.

The Republic of Macedonia signed and ratified the European Convention on Extradition, the First and the Second Additional Protocols in 1999 published in the Official Gazette of the Republic of Macedonia No.23/99 and in the same time made reservations towards the convention and the two additional protocols. The first reservation was made towards Article 4 of the Constitution of the Republic of Macedonia, which does not allow the extradition of the citizens of the Republic of Macedonia, the provisions of this Convention shall only apply to the persons which are not citizens of the Republic of Macedonia, and the preceding statement concerns Article (s) 6. Reservation was made also,

towards Article(s) 1 where it is stated that the Republic of Macedonia shall not agree to surrender the person claimed, if this person is charged by an extraordinary court or in cases where the surrender is requested for the purposes of executing a sentence, safety measure or correctional measure that was passed by such a court. Regarding Article(s) 12 is has been declared that: "Even in the cases where the final sentence or the arrest warrant are passed by the competent authorities in a country which is Party to this Convention, the Republic of Macedonia reserves the right to refuse the requested surrender, if an examination of the case in question shows that the said sentence or arrest warrant are manifestly ill-founded" (Reservations to ECE 1999). The last reservation concerns the Article 18 where it was stated that: "In the event that the person claimed has not been taken over by the requesting Party, on the appointed date, the Republic of Macedonia reserves the right to annul the measure of restraint imposed on that person" (Reservations to ECE 1999).

The Republic of Macedonia signed the Third Additional Protocol to the European Convention on Extradition on November 10, 2010 and ratified it on November 21, 2013. After this, the protocol was published in the Official Gazette of the Republic of Macedonia No.135/2013. The Third Additional Protocol signed and ratified by the Republic of Macedonia entered into force on March 1, 2014. Regarding the Fourth Additional Protocol to the European Convention on Extradition, the Member States of the Council of Europe signed it in Vienna on September 20, 2012 and entered into force on June 1, 2014.

PROTECTION OF HUMAN RIGHTS AS A BASIC CONSTITUTIONAL PRINCIPLE IN CONTEXT OF EXTRADITION

Basic human rights and freedoms of citizens are acknowledged by international law and determined with the Constitution as one of the fundamental values upon which is based the constitutional order of the Republic of Macedonia. Human rights and freedoms are realized upon the Constitution. The law should provide their realization and that can only be determined with accomplishment of some rights and freedoms, when that is provided by with the Constitution and when there is a need for their realization. The Constitution does not allow, with law, or any other act, limitations to be provided on human rights and freedoms. They can only be limited in cases determined by the Constitution.

Each country is left free to adopt the institutional arrangements and political system most congenial to it; those which best reflect its people's needs and its national traditions. All that is demanded is respect for certain minimum standards concerning relations between the citizen and the state, respect for certain human rights and essential freedoms (Cassese, 1990). Extradition can and should be realized only when there is substantial ground and enough evidence that the criminal offender committed the criminal offence and only if this is supported with international instruments and made upon a legal basis. Although extradition procedures conflict with international human rights, the courts, especially the European Court of Human Rights guarantee that the individual rights are respected. The newest form that is mayor obstacle for conducting extradition is the death penalty. No human rights convention outlaws the death penalty, but protocols to the ICCPR and ECHR do that (Dygard and Van Wyngaert 1998, 196).

Regarding the respect of human rights and implementation of international instruments, the Republic of Macedonia in 1995 has signed the ECHR and subsequently the Protocols toward the ECHR.

The latest novelties concern the fact that the Republic of Macedonia on 17 June 2016 has signed the Protocol No.15 to the ECHR. What is important about this Protocol concerns to the following changes to the Convention: adding a reference to the principle of subsidiarity and the doctrine of the margin of appreciation to the Preamble of the Convention; shortening from six to four months the time limit within which an application must be made to the Court; amending the 'significant disadvantage' admissibility criterion to remove the second safeguard preventing rejection of an application that has not been duly considered by a domestic tribunal; removing the right of the parties to a case to object to relinquishment of jurisdiction over it by a Chamber in favor of the Grand Chamber; replacing the upper age limit for judges by a requirement that candidates for the post of judge be less than 65 years of age at the date by which the list of candidates has been requested by the Parliamentary Assembly.

THE ROLE OF THE REPUBLIC OF MACEDONIA IN PROTECTING THE INVIOLABLE HUMAN RIGHTS

Republic of Macedonia attaches priority importance to the protection, respect for and promotion of human rights and freedoms. In this context, the Republic pursues the strategic commitment of ensuring, both in law and practice, effective respect for international obligation which were assumed and for domestic legal norms in that field.

The legal system of the Republic of Macedonia regulates the relations between domestic and international law envisaging that international agreements ratified in accordance with the Constitution are an integral part of the domestic legal order and may not be amended by law, thus placing international agreements ratified in pursuance with the Constitutional hierarchically above national law (Dzankic 2013). The above mentioned applies to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred as ECHR) signed in Rome on 04 November 1950 and entered into force on 03 September 1953. The main purpose for signing the Convention was the maintenance and further realization of human rights and fundamental freedoms by the Council of Europe. The Republic of Macedonia signed the ECHR on 09 November 1995 and it entered into force on 10 April 1997. The provisions from ECHR are incorporated in the Constitution of the Republic of Macedonia into the Chapter about Fundamental freedoms and rights of the individual and the citizen. The first provision referees to prohibition of discrimination and to the fact that citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of gender, race, color of skin, national and social origin, political and religious conviction, property and social status. Citizens are equal before the Constitution and the law (Article 9 1991). Similar provision regarding prohibition of discrimination is contained in the ECHR.

In Article 10 of the Constitution it is stated that human life is inviolable. Capital punishment shall not be imposed on any grounds whatsoever in Republic of Macedonia (Article 10 1991). This provision from the Constitution corresponds with Article 2 of the ECHR. In Article 11 of the Constitution it is provided that human physical and moral dignity is inviolable. Any form of torture, or inhuman or humiliating treatment or punishment is prohibited and similar provision it is contained in Article 3 of ECHR where prohibition of torture is elaborated.

The right to liberty and security of the person is established under Article 12 of the Constitution, which guarantees that the right to freedom is inviolable. No person can be restricted in freedom except by a court decision or in cases and procedures determined by law. The person apprehended or detained must be immediately informed of the reasons for their apprehension or detention as well as on their legal rights and must not be forced to make a statement. The person has the right to defense counsel in the police and court procedure. Detained persons must be brought before a court as soon as possible, within a maximum period of 24 hours from the moment of detention and the court will, without any delay, decide on the legality of the detention: a person unlawfully or without any grounds detained apprehended or convicted has the right to legal redress and other rights determined by law (Article 13 1991).

Foreign nationals in the Republic of Macedonia enjoy rights and freedoms guaranteed by the Constitution, under conditions set forth in law and international agreements. The extradition of foreign nationals can be carried out only on the basis of a ratified international agreement and on the principle of reciprocity. Foreign nationals cannot be extradited for political criminal offences. Acts of terrorism are not regarded as political criminal offences (Article 29 1991).

In the Constitution it is also provided that the freedoms and rights of the individual can be restricted only in cases determined by the Constitution. The restriction of freedoms and rights cannot be applied to the right to life, the prohibition of torture, inhuman and humiliating treatment and punishment and the legal determination of punishable offences (Article 54 1991).

As regards the protection mechanisms in case of violation of the rights guaranteed under the ECHR, both in terms of deprivation of freedom and in terms of violations of any other rights, there is a guarantee for the protection of the fundamental rights and freedoms through a procedure, regulated by law, before the regular courts in the Republic of Macedonia, as well as before the Constitutional Court, the National Ombudsman, and before the Survey Committee for Human Rights at the Parliament of the Republic of Macedonia.

The internal legislation of the Republic of Macedonia guarantees the fulfillment of the obligation of the state to ensure effective implementation of the provisions contained in the ECHR. Article 116 of the Criminal Code (2004) regulates the application of the criminal legislature to everyone who commits a crime on the territory of the Republic of Macedonia.

ARE ASSURANCES FOR PRETECTING HUMAN RIGHTS ENOUGH TO CONDUCT / AVOID EXTRADITION?

It is generally accepted that states have no general obligation to surrender a person who is within their territory. Because of this, many states have signed bilateral (between two states) and multilateral (between several states) extradition treaties agreeing to transfer "fugitive offenders" in certain circumstances. States also use non-binding schemes and agreements for the same purpose. Extradition may still be possible even where there is no treaty or agreement between two countries, but it will depend on the law of the requested state. In the absence of an extradition treaty, surrender of a claimed person can be made on

the principle of comity founded on the basis that it is not in the interest of the international community such serious crimes of international significance to stay unpunished.

Reliance on diplomatic assurances has been a longstanding practice in extradition relations between states, where they serve the purpose of enabling the requested State to extradite without thereby acting in breach of its obligations under applicable human rights treaties. Their use is common in death penalty cases, but assurances are also sought if the requested State has concerns about the fairness of judicial proceedings in the requesting State, or if there are fears that extradition may expose the wanted person to a risk of being subjected to torture.

When inviolable human rights are engaged such as the right to life, prohibition of torture, right to a fair trial and many others, in those cases assurances for conducting an extradition are not enough because the risk of violation of those rights is higher than the desire to act in accordance to the law and to extradite a criminal offender. For example, if the extraditable offence potentially attracts the death penalty, most states that prohibit capital punishment will refuse to extradite unless they receive assurances that the subject will not be sentenced to death or, if imposed, the death penalty will not be carried out. Such assurances are specifically required in a number of extradition treaties and domestic legislation, and follow from some State's obligations under separate human rights treaties.

As mentioned above, it will also be a violation of the prohibition to torture to extradite a person to a state where criminal offender faces a real risk of such treatment. This is provided in a number of international human rights treaties (directly or indirectly). In some cases when there is a possibility of violation of the guaranteed human right concerning the right to a fair trial, the requested state may deny the extradition request if there is a even the smallest possibility that the fair trial may be denied even if the requesting state gives a strong assurances that the criminal offender will have a fair trial after his extradition.

CONCLUSION

The development of human rights linkage to extradition is a new field of law and it has been actualized these past decades. It is common sense that a general obligation of states is to protect rights and freedoms enshrined in international conventions which includes respect for all individuals in their territory. If there is a real risk of "irreparable harm", states are obliged not to extradite. This paper tried to explain the concept of extradition in the internal legislation of the Republic of Macedonia and brought the institute of extradition in correlation to possible human rights violations. A tension between extradition and human rights should be eliminated by achieving a compromise between extradition as an instrument for inter-state cooperation in order to bring criminal offenders before justice and human rights as protector of the offender's rights. 

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Abstracting

THE RESPONSIBILITY TO PROTECT: ITS RISE AND DEMISE

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Abstract

The doctrine of Responsibility to protect was developed in order to address the issue of mass atrocities, which were brought about by intrastate and ethnic conflicts as well as oppressive regimes throughout the world. It embraced the idea of the immunity of human rights, the moral need to intervene in cases that shock human conscience, and posed a challenge to the conventional understanding of sovereignty by redefining it as "responsibility". However, this essay argues that the controversial implementation of the doctrine in Libya and its non-implementation in the case of Syria despite widespread humanitarian crisis in terms of civilian casualties and massive population displacement amount to a failure.

Key words: intervention; sovereignty; humanitarian intervention; Libya; Syria; UN Security Council

INTRODUCTION

As the Cold War came to an end, the last decade of the XX century prompted a search for a "new order" for a world which was torn apart by acts of genocides, intrastate conflicts and ethnic cleansings. In response to growing humanitarian crises international organizations and states including the great powers appeared sharing common concerns and willing to act together.

Subsequently, the United Nations Security Council emerged as an effective institution authorizing use of force by referring to humanitarian concerns in some cases. However, the UN Charter that was designed for the international community of post-World War II simply fell short on justifications for "humanitarian interventions" even if international community and the permanent members of the United Nations Security Council (P5) agreed upon to act. This deficiency was caused by the Charter's adherence to the central principle of modern international system, namely state sovereignty. Thus, the Charter as a substantial source of international law lacked any reference to humanitarian interventions and Article 2(4) reflected a commitment to national sovereignty.

But humanitarian crises continued to emerge questioning what really should fall within the domestic jurisdiction of states, and proposing what warrants an international involvement to avert occurrences of events that shock human conscience. Should international community respond to mass atrocities that take place within sovereign states? Do states have "duties beyond borders"? (Hoffman 1981; Welsh 2004).

FROM HUMANITARIAN INTERVENTION TO RESPONSIBILITY TO PROTECT

Authorization of military action for humanitarian concerns lacked a paramount legality and UNSC could only adopt resolutions as to a "breach of international peace" and "threat to international security" which was an indirect way to respond to some humanitarian crises and call on states to act together (Security Council Resolution 688, and 794). The dilemma of human rights vs. state sovereignty was well known way before the humanitarian interventions in Iraq, former Yugoslavia, Somalia, etc. Yet, the sovereignty as a main rule of the international agreements signed by the sovereigns was not even disputable since the XVII century. Despite the Geneva Convention of 1951, with its roots in the Treaty of Westphalia (1648), the legal framework of modern international law had once again proven to be totally inoperative in cases of mass violations of human rights throughout the 1990s.

The devour for constructing a new norm for the legal justification of the "morally esteemed interventions" that perceives the sovereignty of human beings over the sovereignty of the state had reached its peak in the new millennia when Kofi Annan as the UN Secretary General addressed the General Assembly asking: "If humanitarian interventions is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?" (United Nations 2000).

The International Commission on Intervention and State Sovereignty (ICISS) was formed in 2000 under the auspices of the Canadian government to find an answer. It was "a response to Secretary-General challenge to the international community to endeavor to build a new international consensus on how to react in the face of massive violations of human rights" (ICISS 2001). The commission published its report in December 2001, formulating a new concept, "responsibility to protect" instead of "the right to intervene" in cases of mass atrocities (ICISS 2001). The report seems to be an attempt to re-interpret traditional norms of non-intervention and national sovereignty, and regulate international response to humanitarian crises (Evans 2008). It is based on the view that sovereignty does not only entail rights for states but also carries with it a responsibility to their citizens that of protecting them against grave human rights violations. Thus, instead of questioning sovereignty and calling for an international intervention to respond mass atrocities, thus, dictating a foreign will over national governments, the new doctrine proposes a mechanism of protecting citizens derived from the very concept of national sovereignty. The old dictum of "if sovereignty, then non-intervention" (Vincent 1986: 117) is replaced with "if sovereignty, then responsibility." Hence, in case a state is unable or unwilling to protect its citizens the ICISS report asserts that the responsibility should move on to the international community (Homans 2011).

The doctrine of Responsibility to protect (R2P) maintains that a sovereign is entitled to protect not violate the rights of its subjects, and the failure to protect ascertains the absence of sovereignty. In this way, international coercive measure, introduced as part of R2P, cannot be interpreted as an intervention into a "sovereign entity" since sovereignty is dissipated with the failure to protect.

With such an attempt to reformulate the concepts of sovereignty and intervention the ICISS report aimed to influence the conduct of international relations and the way in which sovereign states behave toward their own citizens. Re-conceptualizing sovereignty as responsibility and not a right or dominion was expected to break the deadlock on the sovereignty-humanitarian intervention debate. Moreover, avoidance of the contested term 'humanitarian intervention' was an attempt to disperse the resistance of the non-Western world to the idea of an international role in addressing 'domestic human rights issues' by Western powers with imperialistic motives.

In 2004, even though R2P was then referred to as an "emerging norm" (United Nations 2004) of international law, it was repeatedly endorsed on the highest levels of the international community mostly through stressing that the Charter reaffirmed a fundamental faith in human rights but did not do much to protect them, thus R2P could be an ideal reinforcement concerning the nature of the Charter.

Finally, the principle of Responsibility to protect was established as a "norm" in the 2005 World Summit where it was unanimously agreed upon by all UN member states - including Russia and China who had raised concerns for state sovereignty before (Wheeler 2000). Narrowing down the issues addressed by R2P the Outcome Document specifically referred to protecting populations from "genocide, war crimes, ethnic cleansing and crimes against humanity" (United Nations 2005). In doing so, with the Outcome Document, states undertook the responsibility to take "collective action, in timely and decisive manner, through the Security Council" (United Nations 2005). Assigning the Security Council such a task was consistent with the Council's mandate to "maintain international peace and security". Thus it was important that Security Council too reaffirmed the emerging "norm" of responsibility to protect. This came in 2006 with Security Council Resolution 1674, for the first time the Council made a reference to the Responsibility to protect in a resolution adopted by all members including Russia and China. With the Resolution 1674 Security Council pledged its commitment to address mass atrocities as "systematic, fragrant and widespread violations of international humanitarian and human rights law may constitute a threat to international peace and security" (Security Council 2006).

THE DOCTRINE OF R2P AND ITS PRACTICAL IMPLICATIONS

As outlined in the Outcome Document agreed upon by more than 150 heads of state and government the doctrine of R2P consists of three pillars:

- The state carries the primary responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and their incitement;
- The international community has a responsibility to encourage and assist states in fulfilling this responsibility;

- The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a state is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the Charter of the United Nations (United Nations 2005).

It had been expected that the newly "emerging norm" of R2P would be effective in preventing gross violations of human rights. Besides, it was expected that the concept of R2P would resolve the tension between state sovereignty and the idea of humanitarian intervention as a last resort in cases of mass atrocities committed by a sovereign state. Thus, its (r)evolutionary arguments regarding humanitarianism, the limits and conditions of sovereignty and the responsibilities of the international community rendered R2P a moral, conceptual and practical tool to address humanitarian crises of the new millennium (Doyle 2016).

The understanding of sovereignty had gradually evolved in favor of individuals from the day it was considered as unlimited power of the state over a given territory and its people. R2P has carried the understanding of sovereignty into the realm of responsibility. The notion of "sovereignty as responsibility" as reformulated by the International Commission on Intervention and State Sovereignty (ICISS 2001), implies that the state authorities are directly responsible for guaranteeing the safety and security of its citizens, and the international community has a duty to assist states in fulfilling this duty. If the state fails to fulfill the duty of protecting its peoples, by omission or commission, then the contract signed becomes void (Hobbes 2009), and the responsibility of protecting masses from anarchy or tyranny converts to the international community (Holzgrefe 2013).

As a response to "new interventionism" of the 1990s the proponents of R2P, as recognized in the Outcome Document of 2005, argued that invocation of R2P needs to be done case by case. Furthermore, the principle of R2P placed military intervention as a means of "last resort." The international community has the "responsibility to use appropriate diplomatic, humanitarian and other peaceful means" before an outright military operation to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Moreover, the humanitarian consequences of the intervention should clearly be less than the predicted results of inaction, and the proposed military action is to be kept on the proportion (Zifcak 2014). Thus, the R2P does not propose an immediate coercive response to all cases of humanitarian crises. It envisages preventive measures as well as conflict management and conflict resolution mechanisms.

What is, thus, important to underline is that R2P is not just about responsibility to react. It involves the responsibility to prevent which seeks to take steps to ensure mass violations of human rights will not occur, and most importantly the responsibility to rebuild which extend a duty to international community to help build economy and institutions in the country concerned. The main problem with R2P when it comes to righting a wrong in a sovereign country by use of force is the question of when, with whom and how to do so. Besides, how many civilian deaths would fulfill the requirements of an R2P intervention is again a mystery. All these add to the political nature of the R2P let alone the challenges it poses to core principles of international relations namely state sovereignty and non-intervention.

Moreover, as a moral stand against grave human rights violations, the R2P may be agreeable despite some divergent views on it, but as a practice it is likely to be a constant source of disagreements, even conflicts among "sovereign" states. The claims of inconsistencies, double standards, operational failures and unexpected outcomes will always haunt the debate on the implementation or non-implementation of R2P.

THE PRACTICE AND NON-PRACTICE OF R2P: THE CASES OF LIBYA AND SYRIA

Regardless of the rapid development of R2P as a "norm for our times" (Bellamy 2015) it wasn't until the adoption of the Security Council Resolution 1973 in 2011 with its explicit reference to R2P that the doctrine on paper was applied in practice with its controversial coercive mechanism. Resolution 1973 was justified by a broad reference to the need to "maintain or restore international peace and security" claimed to be threatened by the aggression of the Libyan government toward its own citizens (Security Council Resolution 1973). Thus, after "determining that the situation in the Libyan Arab Jamahiriya continues a threat to international peace and security" (Security Council Resolution 1973) the resolution asked for an immediate ceasefire, demanded the formation of a no-fly zone and permitted all necessary measures for her members to implement the no-fly zone and protect the civilians in Libya.

The citation of the doctrine of Responsibility to protect as the ground for an international intervention by the UNSC – unlike the case of Kosovo - was seen by some as a beginning of a new era (Weiss 2011; Bellamy and Williams 2011). The Resolution 1973 was, in fact, the first of its kind authorizing use of force based on the doctrine of R2P against a "sovereign country," which differentiated it from all other Security Council resolutions that make references to responsibility of governments and international community to protect civilians. At first, the Resolution 1973 appeared as a consensus to initiate a set of humanitarian measures to ensure protection of the civilians, however, soon it was taken by the coalition powers as a mandate to induce a "regime change" in Libya. Even though the resolutions never authorized a specific duty to the NATO, it begun its assault against the Libyan Government forces and contributed to the ousting of Muammar Gaddafi from power. The breach of the mandate of the Resolution by setting an objective to overthrow the regime instead of protecting civilians was hard to justify from a legal/normative point of view that discredited the practice and reliability of the doctrine of R2P (Zifcak 2014).

Despite the military victory on the ground, the means used for this victory and the consequences of "the day after" didn't only reveal the overwhelming differences between the non-disputable doctrine of R2P and its controversial implementation, it also justified the concerns of the parties -especially Russia and China- who abstained from the voting of resolution 1973 in the Security Council and were not very enthusiastic right from the beginning about the doctrine of R2P (Morris 2013). Hence, the empirical failure of R2P illustrated the inherent problems of the doctrine when it comes to resolving unrest within a sovereign country. Questions of when, by whom and how to use force begged for concrete answers that are above the domain of international power-politics. Military intervention that NATO conducted was considered by critiques as a breach of Security Council Resolution 1973 which demanded the immediate establishment of a cease-fire and an end to all

violence. Besides, there was no proper effort on the part of the intervening states to establish a no-fly zone, and cease-fire demanded by Resolution 1973 wasn't enforced for the rebels (Hehir 2013). Moreover, the critiques argued that in the Libyan case the intervening powers deviated from the fundamental norm of neutrality of the R2P to arming and funding rebels against the government.

According to the Outcome Document that regulates implementation of R2P international community has also the "responsibility to use appropriate diplomatic, humanitarian and other peaceful means" before an outright military operation to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. Thus, military intervention has to be the "last resort." Was it the last resort in the case of Libya? Whether these other peaceful measures were taken by the intervening states before a military action in Libya is doubtful (Morris 2013). The argument that situation on the ground required a speedy military response has a point but this does not change the policy revealed soon of the coalitions forces to use the Security Council mandate to ensure a regime change in Libya.

The non-activation of responsibility to rebuild in a failed state also escalated criticisms. The reservations of the states who abstained from Resolution 1973 were further acknowledged in 2012 by the Secretary-General himself as he stated:

> Others have expressed the view that those charged with implementing Council Resolution 1973 exceeded the mandate they were given by the Council (…) it is important that the international community learn from these experiences and that concerns expressed by the member states are taken into account in the future (United Nations 2012).

Following the mis-practice of R2P in Libya the crisis unfolded in Syria, where every aspect of the civil war begged for R2P to be implemented in full, demonstrated the barriers to its practice (Thakur 2015), and the shortcomings of the principle in a game of power politics (Tocci 2016). The scenes from the ground in Syria have for long warranted full implementation of R2P. According to The Economist the death toll in Syria reached 470 000 at the beginning of 2016 (The Economist 2016), and since the beginning of the civil war more than half of the population in the country have been displaced. Commission of Inquiry authorized by the UN Human Rights Council published reports documenting massive human rights violations committed by government forces and armed opposition groups. According to the Commission's reports civilians were attacked, health and aid workers were targeted, barrel bombs and chemical weapons were used and indiscriminate executions were carried out, torture and rape were widely practiced (United Nations Human Rights Council 2014). All these clearly constituted "crimes against humanity and war crimes" concluded the Commission, the occurrences which R2P was set to prevent and act upon. Thus, the scale of humanitarian crisis and crimes perpetrated had justified the invocation of the norm of R2P with its coercive element. Yet, the Security Council, responsible for the maintenance of international peace and security, could not reach a consensus on responding to the atrocities in Syria. Though the Council referred to "responsibility to protect" the civilians in its five resolutions on Syria none authorized the use of coercive means under Chapter VII of the UN Charter like Resolution 1973 regarding Libya to end violence targeted the civilians. Attempts to pass resolutions in the Security Council to impose sanctions on Syria and bring the Syrian government before International

Criminal Court for committing war crimes and crimes against humanity were repeatedly vetoed by Russia and China (Ziegler 2016). The Russian opposition to any attempt within the Security Council to impose sanctions on Syria prevented the Council to take a step under Chapter VII of the Charter. The Russians, viewing the Syrian government as their staunch ally in the Middle East, were determined not to let an intervention in Syria similar to the one in Libya that would result in a regime change (Valenta and Valenta 2016).

However, international community worked together to bring the warring sides to agree on a ceasefire and peace settlement for which various rounds of talks were initiated by the UN in Geneva. Besides, the UN agencies worked hard to improve access to Syrian civilians in need of humanitarian aid. These minor successes aside, the Security Council, and thereby international community, has failed in protecting the Syrian civilians.

The Syrian case demonstrated that in the absence of consensus among the "permanent five" of the Security Council it is highly unlikely to use R2P in full with its coercive means. During the first years of the civil war the inaction of the Security Council was caused due to the breakdown of consensus on the implementation of R2P over Libya (Nuruzzaman 2013). Later, even with the arrival of ISIS as an "enemy of humanity," the silence of the Council continued since the "permanent five" could not agree on political objectives of implementing R2P and diverged about their own strategic gains. The idea of protecting civilians got lost in the search for influence in the aftermath of an intervention in Syria.

CONCLUSION

As a moral stand against grave human rights violations R2P had enjoyed unanimous international support, but as a practice it has demonstrated to be a constant source of disagreement among sovereign states. Inconsistencies, double standards, operational failures, conflicting interests of parties involved and unexpected outcomes proved to undermine validity of R2P.

Evidently, the covert agenda for regime change in Libya when implemented, and the failure to employ it when needed in Syria marked consecutive setbacks for both the doctrine and practice of R2P. The principle has conclusively failed to justly and effectively address the deep rooted problems it had offered to solve and gave the impression to be a good tool of political jockeying more than a compelling means to prevent mass atrocities.

Even though R2P has proven to be selective, ineffective and open to abuses dismissing R2P altogether would only reinforce the dilemmas of today and display the inability of the international community to act to stop atrocities that shock human conscience. In order not to nullify the achievements of R2P on humanitarian concerns and the reinterpretation of state sovereignty in international law, the principle needs to be subjected to serious restructuring that will make it more feasible and definite – in other words less imperfect. 

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MORALITY AND ETHICS IN POLITICS IN THE CONTEMPORARY SOCIETIES

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Abstract

Morality and ethics are among the most influential factors affecting society's development throughout history. There is a slight difference between the terms ethics and morality. Ethics derives from mankind's experience throughout history and in actuality it represents the essence of the ethical rules and principles derived from the human understanding of the differentiation between good and evil. Whereas morality defers from this definition of ethics in the sense that morality has its origin in religion and theology. Morality in politics or the Moral politics has gradually succeeded in conquering the public scene. The contemporary world that we live in today is facing many challenges that have a moral auspice; humankind needs more answers. An adequate academic approach is needed and further public discussion entails. Societal involvement is crucial in any attempts of finding the most appropriate response to the challenges of the modern world encumbered by ethical and moral issues.

Key words: moral; ethics; religion; society; politics

INTRODUCTION

The existence of God, according to Kant, is what defines the postulate of the moral law. Hence, he believes that religion, specifically the belief in the existence of God, is not only necessary for having a theoretical basis for morality, but for having a practical foundation for morality, as well. Kant further states that if God is an illusion, then values and virtues i.e. social virtues are also an illusion. In order for anyone to believe in the dignity and excellence of one's own soul and the souls of others, he would need to believe in the supreme principle of respect and excellence, which in fact originate from God and the image of God in which we are created (Janet 1884, 118). Values and virtues are desirable fundaments for everyone, and the life of an individual should be based upon these premises since they are important for building and regulating the relations in communities and societies.

Kant believes that the ultimate principle of morality must be the moral law, established abstractly enough to be able to lead us in the right direction and being applicable in any situation. There is not a single society which succeeded outside of this rule, i.e. without postulating the value-based modus operandi at the very core of its societal system, giving the system a deep moral character in itself. Zooming out from the grand-scale to the micro-scale, in the lives of individuals, no success, prosperity, hope, and happy future are possible on a sustainable level, without moral grounds in the hearts of these individuals. The moral grounds should derive from a source for moral obligation. "Any exploration of morality must include a search for the source of moral obligation" (Burns 2008).

The Biblical model for the creation of man in the image and character of God, gives us knowledge that each individual carries a kind of a moral mark since his birth, and this is an embedded moral code that is the core of the biblical message for our existence as mankind. If people are created in the image of God, then they have a solid moral foundation with which they are innately equipped to live morally. According to this Christian view if individuals in their lives choose to develop and govern their character and nature in accordance with these innate moral postulates and aligned with the instructions of the Lord, then they will be bringing on the scene in their lives a natural environment and a state of consciousness in which they can naturally develop themselves, achieve the most in their lives, and realize the dreams of their existence, satisfied with their life achievements.

The question that should be posed in this context is, what the values and virtues are that are the matter of this discussion, where have they originated, and what might be the way of ascertaining that precisely those values and virtues are the right ones.

Science has been long engaged the quest for answers to these questions. Pieper in his book "The Four Cardinal Virtues" numbers out certain values that have been proven throughout history as the most widely accepted by political thought: Prudence – wisdom, sagacity, Justice – fairness, righteousness, Fortitude – endurance, patience, courage and Temperance – moderation, temperance, sobriety (Pieper 1965, 125). Some modes of thought have sought the foundation of these virtues in the secular sphere. Bentham contends that "Prudence and effective benevolence (…) being the only two intrinsically useful virtues. All other virtues must derive their value from them, and be subservient to them, and be subservient to them." (Hazlitt 1994, 82). Justice, righteousness and fairness are the second set of divine attributes which directly determines the outcome of a person's life. The quality of being just and fair, the principles of righteousness and fairness in man's attitude and behavior, the strict application of moral obligations and the practical agreement with natural and divine law, the integrity in behavior among each other, as well as fairness, equality, honesty, and openness are as well all together values and virtues requested per Biblical instruction.

MORALITY AND ETHICS IN A SOCIETY

Morality: Notion and theoretical postulates

Christian political thought and philosophy in general have been continually trying to analyze the issues of morality and ethics. There are differences in approaches depending on the historical period. A brief overview of the theoretical views of some political thinkers throughout the centuries will bring us closer to the core of the issue.

Utilitarianism by John Stuart Mill, also known as "Highest possible happiness principle" is a category that should be applied in politics, and he believes that the happiness of the individuals in a community, their safety and their satisfaction is the ultimate goal of all possible goals, that legislators must take into consideration.

Descriptive generalizations are able to formulate normative principles. Accordingly, science in certain situations includes not only research of the facts, but also generalization of normative ethical principles. Often, moral principles are available for empirical testing and evaluation, as much as the law of physics or human behavior, thus ethics is a kind of science in the narrow sense of the word. "To found virtue in pleasure, also makes ethics an empirical science, since pleasure is immediately experienced, while virtue can only be defined. Thus the course for a moral philosophy would be consistent within the frame of reference of the new science." (Von Eckardt 1959, 307).

For Plato, the source of all knowledge is intuition, including both, knowledge in a general sense of the word as well as knowledge about justice in a country. Ethics is the highest form of cognitive consciousness, and political ethics is its most important segment. Without knowledge for good, hardly anyone could act wisely and fairly. For Plato, the moral views of the participants in the political system discover and establish the justice system and strengthen the justice therein. Although based upon subjective elements, this assertion albeit has objective firmness that has been reflected in empirical practices throughout history.

Jean-Jacques Rousseau, in his political writings - and especially in his work "Social Contract" (1762), based on the Plato's assumptions that political justice can be known only through a morally upright view – is looking for the right principles for establishing a good society, and requires an introduction of moral legitimate constitutional principles.

Augustine sees the source of the fundamental moral principles as founded in the Bible, and as set straight from God. But as such they are not simply revealed to mankind. On the contrary, in order for someone to come to the correct knowledge of the actual moral principles, he must discern the true essence of faith, and reach for the right knowledge about God, i.e. to have faith that leads to the knowledge of God. Discovering God's truths we actually discover the moral truths, says Augustine.

Hence, the arguments for moral principles and truths spring from faith and the Bible, not from any human authority. Augustine further says that the understanding of the knowledge of God is a reward for faith, and that is why he emphasizes the need not to seek understanding in order to believe, but to believe in order to understand. Augustine in the Tractates on the Gospel of John, Tractate 29, analyzing the Biblical quotes from John 7:14-18, concludes that the knowledge of the truth of God incorporates the knowledge and principles of morality.

Emil Brunner in his book "Justice and Social Order" analyzes the question for the valid criteria that determine which positive laws are fair and just. In search for answers, Brunner took the position of Augustine, according to which the idea of justice and the concept of divine law are the same work. Either the word justice refers to the primal ordinance of God, and has the ring of holiness and absolute validity, or it is as a tinkling cymbal and sounding brass." (Brunner and Hottinger 1945, 46).

Thus he who does not believe in God, who has not have revealed the importance of the Word and the knowledge of it, including the knowledge of moral principles and of righteousness, and fairness, actually has no valid criteria to determine what is fair and just, and what is not; what springs from true moral premise, and what does not.

Every society needs working principles, criteria for its positive laws and a system of limitation of evil and injustice. The moral view, therefore, springs from religious ideas, or rather of the evangelical law on Christian faith. And therefore, the law of fairness and justice is actually a law of love, the original sacrificial Christian agape love (Niebuhr 1935, 105). Martin Luther King in his famous *Letter from a Birmingham Jail wrote*:

> How can someone determine whether certain law is just or unjust? The righteous law is a norm, which although prepared by man, is in compliance and adjusted in accordance with the moral law or the law of God. An unjust law is a norm also, but a norm which is not in a harmony with the moral law. (King 1963).

Morality is defined as a human behavior that is freely subordinate to the ideal of what is good and right, and appropriate. This is not about discovering new principles, but the better application of those that already exist and are accepted. Morality is often associated with ethics, but also with the church and religious belief in general. According to the Biblical view, morality derives directly from God's revelation to mankind, as it has been described in the Bible. The relationship between morality and religion is often discussed, and ethical philosophy believes correctly that moral action depends on religion. "Divine Command Theory includes the claim that morality is ultimately based on the commands or character of God, and that the morally right action is the one that God commands or requires. All versions of the theory hold in common the claim that morality and moral obligations ultimately depend on God." (Austin 2005, 1).

Ethics: Notion and theoretical postulates

Ethics is study of the concept that refers to practical reasoning for good, proper, duties and obligations, values and virtues, freedom and liberties, rationality and free choice in life. Ethics is often equated with morality and the general perception is that both categories are the same. Ethics tries to discover the principles based on which humanity differentiates between good and evil, and on that basis tries to establish a set of knowledge and principles that will regulate human behavior under certain established standards. The source of such knowledge and principles is not an external one, i.e. does not come from some alienated center, but has been established over a certain period of time through the process of forming a perception of what is good and what is evil. "Hence, ethics may be defined as the science of the moral rectitude of human acts in accordance with the first principles of natural reason. Logic and ethics are normative and practical sciences." (Cathrein 1909).

Thus, ethics has its background in man's own experience and partly in the principles and truths adopted by other scientific disciplines such as philosophy, logic and metaphysics. As a science, ethics has its own method, which is either speculative or empirical, or one that derives from metaphysics, as well as a fourth form of method which derives from experiences. Hence, it is seen that the supernatural Christian revelation is not an appropriate source for the definitions ethics uses, although some elements derived from it comprise the science of ethics.

Kant has revolutionized the view of ethics, transforming it from a purely theoretical field of knowledge to a field of practical application of knowledge. He finds ethics in the absolute, universal and categorical moral law. He says that the law should not be connected to an external authority, but should become a law of our own reasoning, which is an autonomous and subjective principle and a motive that will become an individual will. Thus, ethics has in itself a human judgment; it is a product of human sophistry and philosophy and is a result of human empirical experience. "First of all, the sublime beautiful on Kant's view is a uniquely human experience (…) and the human capacity for the experience of the sublime lies directly in our own predisposition for feeling moral ideas." (Louden 2000, 118).

It means that its principles and motives fall under a category which is subject to the ravages of time, although it does tend to be more extensive and of a better quality as time passes by. However it is influenced by the social environment where it has been continually profiled as the basis for human behavior in society. Accordingly, ethics is an entirely different concept of morals and morality because they originate from an external authority, which is God's law and the moral postulates in it, and these in turn are considered to be a dogma and are not subject to change, regardless of the impact of the social environment.

Differences between morality and ethics

There are differences in the understanding of ethics and morality. The difference basically comes from the foundations from which these two categories are claiming their essential meaning i.e. from an external source which is the Bible in the case of morality versus an empirical experience throughout the centuries in the case of ethics. "Ethics is the difference between morality and legality. Ethics is the difference between what I ought to do and what the law demands I must do." (Deffinbaugh 2004).

Another issue that is being contemplated by political thought, and is related to the differences between ethics and morality, is the connection between the moral sources of values in different cultures to the type of institutions that are optimal for providing a realistic platform for incarnating such moral impulses (Buijs 2002, 6). Western understanding of morality, developed in a religious context, comes from a "Jewish - Christian tradition". The practical sources of moral reasoning in this tradition are the key texts of the Jewish and Christian holy books, where moral obligation derives from God's commandments (Burns 2008, 7).

There are questions concerning the link between the golden rule of Christianity and the ways in which it can be applied in the modern world. There are as well questions pertaining to the relations between the moral rules and the current moral norms which are a fundament for making specific life decisions (Burns 2008, 16). Also, the central question is whether the moral norms operate in the field of law and jurisprudence?

Does morality determine legal rules and regulations? If so, then how? How should the legislation and practices take into account and treat the moral law?" (Burns 2008, 17-18). These are also challenging questions for science to address for it, should be examining the ways of accommodating the legal system into the traditional moral value system of the Bible.

The Christian idea of "*caritas*" and "love for all" through the grace of Christ became one of the fundamental ideas of modern living and a constitutive element of the western system of care, through homes for the poor, hospitals, orphanages and numerous other social institutions, institutions for children without parents, children and persons with disabilities or with special needs.

According to the French thinker Montesquieu, an indispensible feature of republican government is the value, virtue, or moral excellence, as some call it. When values are pulled out of the public scene and disappear, then ambition enters into people's hearts and lusts conquer the stage, love and the care for other humans disappears, and fear permeates everywhere (Bonta 2003, 10).

PRACTICAL IMPLICATIONS AND INFLUENCE OVER SOCIETY

Morality is a teaching of the appropriate behavior of individuals, nations and society as a whole. The primary moral principles, prescribed as a recipe for the functioning of humanity, were given in God's word, in the Old Testament of the Bible. There within mankind was given a set of moral rules in the form of commandments on how to regulate relations between family members, between old and young, between employers and workers, rich and poor, men and women, rulers and subjects to rule.

Through many commandments in the form of moral principles, the character of God has been replicated, as is the example of Genesis 18:25. According to this view, God revealed Himself to men as just and fair, and people are His image on the earth, so they need to be fair and equitable as well, so as not to undermine that image of God in themselves. The prime objective of declaring to mankind that people are created in the image of God on earth, is to understand that if we exist in the image of God and are created by Him, then we are capable to be like God, thus we have sufficient potential for performing justice and for exercising an equitable and fair behavior toward others.

Morality in Judaism is linked to special moral types as justice, wisdom and honesty, as opposed to the negative perceptions of evil, stupidity and blasphemy. Teachers of Judaism encapsulate the definition of morality in the phrase "between a man and his friend", a phrase which has grown in the so-called "The Way of the World" or "proper behavior" ("*Derekh Eretz*") applied philosophy. "The challenge to legal positivism must come from morality, and the type of morality that coherently transcends merely procedural questions." (Walzer 2006, 139). Hence morality was raised into becoming one of the central components of Judaism.

MORAL POLITICS: THE ASPECTS OF RULING SOCIETIES

Political sciences in general aim to discern and resolve many ideological conflicts. One of the issues that is constantly at the top of political discourse is whether the morality and ethics should be pivotal factors for the political decision making process in contemporary societies.

The core values that stimulate moral political debate are deeply rooted in the personal belief system of the individual, determining how he or she defines his or her own place in society. Those values of primary identity are race, gender, sexual orientation, and especially religion, which is the basis of many of individual's most fundamental values (Button, Rienzo and Wald 1997, 5-6).

Moral politics pulls us out of the area where facts and reasoning dominate, and social scientists - especially those specializing in political science - feel more comfortable in the realm of the value system. Moral policies are for the most part dealing with values, especially those values that are accepted by society or the state, and those values that are defined by the society or the state as perverted. "As we have changed from a commercial society to an industrial one, we have developed a new set of values in which self-control, impulse renunciation, discipline, and sobriety are no longer such hallowed virtues." (Gusfield 1963, 6). The state acceptance of values reinforces the social status of certain groups, and reduces the status of others (Mooney 2001, 37).

The subject of political analysis in contemporary life today is a special matter of consistency of personal values and attitudes, and political practices, when the faithful is in a position to exercise power. The basic principle is that the faithful must practice leadership with integrity, and his personal values and attitudes must correspond and be consistent with his political views and decisions, even at the cost of losing the support of the electorate. The contemporary political practice shows that there are a large number of active politicians who do not understand and do not accept the significance of the moral aspects of political issues as a foundation for right and proper conducting of state politics. This field is subject to pressure of the type leading to serious compromises with that which is worldly and carnal, thus compromising with God and His instructions.

> The possibility of re-moralization poses some significant questions: Where do moral values come from, and what, in particular, are the sources of moral values in a postindustrial society? This is a subject that, strangely enough, has not received much attention (…) Most people would say that values are either passed along from previous generations through socialization, or are imposed by a church or other hierarchical authority. (Fukuyama 1999, 32).

The answers to these questions will still have to be sought after deep in the sphere of spirituality and God. The assessment is that religious institutions might play a crucial role in the actual imposition of views to the public in order to influence the political establishment when making policy decisions.

According to the morality point of view, there is a need for stressing the principle of not making or carrying out any political decisions, pertaining issues deeply tied in with morality and laden with moral scruples, in an exclusively secular sphere, and without any participation of the spiritually-oriented segment of society and without taking into account the opinion of the religious faith sector. Any issue that contends ethical or moral elements

is an issue that should be delegated to the spiritual and religious camp, in order to try to offer more adequate solutions in a given historical context. My understanding is that answers to moral questions or issues with moral character in it must have a moral source, and accordingly for this point of view that is the Bible. Fukuyama concludes that:

> The virtues of honesty and reliability, which are key to social cooperation and are intangible compound of mutual trust and engagement, are called 'social capital'. Many people have argued that such virtues have religious sources, and that contemporary capitalist societies are living off the cultural capital of previous ages - in America, chiefly its Puritan traditions. Modern capitalism, in this view, with its amoral emphasis on profits and efficiency, is steadily undermining its own moral basis. (Fukuyama 1999, 32).

The questions related to the segment of an applied ethics, which have an ethical sub context, appear to be more natural in essence. The Medical ethics and Bioethics focuses on issues of health care and clinical practices, dealing with situations of life or death, and also some extreme situations such as surrogate motherhood, genetic manipulation of fetal status, unused frozen embryos, abortion, medical experimentation, the rights of persons with mental disability, medical justification for suicide intervention or physician-assisted euthanasia and many other situations that contemporary medical and clinical practice have consistently met (New World Encyclopedia 2016).

The second area is called business ethics, and it examines the moral controversies relating to social responsibility and other capitalist business practices, the moral status of corporate groups, misleading advertising, insider trading, fundamental rights of employees, discrimination at work place, mobbing, affirmative action, testing for the presence of drugs, disclosure of fraud and mishandling of a company, and the like.

Today, an increasing interest by the public and society in general is directed towards the set of environmental ethical issues and protection of the environment. These issues are not of any less importance for the contemporary world than the aforementioned ones. Sexual morality, monogamy versus polygamy, sexual relations without love, homosexual relationships and marital affairs belong to the set of issues with moral controversy, as well.

Social ethics and morality deal with issues such as death penalty or capital punishment, the use of nuclear weapons, arms control, and recreational use of soft drugs, welfare rights, racism and other. All the above mentioned matters of question are subject to a public and academic debate and serious analysis. Humanity and science have not yet given satisfactory answers to many of these bones of contention. That which is considered moral by some, is condemned by others. All these dilemmas are challenging for today's scientific and political thought. In order to respond appropriately, fairly and equitably to all of them, and to offer proper and adequate solutions, there is a need of an open academic mind and the acceptance of additional sources of knowledge.

Christian ethics is defined as the search for good in people. It is not a precise science, but it rather represents a growing practical wisdom which springs from different sources. It relies on that which is good in God's creation and among peoples and nations. But it also divulges that creatures cannot reach the ultimate goal of their existence without this gift of divine goodness in them. "Belief in God, properly understood, is seen as the most fitting response to a world which already shows evidence of moral and physical order and love." (Gill 1999, 232).

CONCLUSION

Morality and ethics as social categories are crucial for generating a sound political culture in any society. Through the process of political socialization these categories influence not only the culture in a nation but its political ideologies as well.

Even though there are differing views in regards to the source of moral foundation which concern the societal realm outside of the religious or theological environment, it is this religious i.e. theological environment that is the only viable sustainable milieu for moral existence. The principles of morality and ethics established as societal standards are the bases of individual and societal development.

> The outstanding illustration of the fusing and separation of the provinces of ethics, law, and theology is the growths of the doctrine of Natural Law…Rules based on reason were law by nature. The right or the just by nature became law by nature or natural law. In this way began the identification of the legal with the moral. (Hazlitt 1994, 62).

Their impact upon society is sizable, and if we look at the jurisprudence segment of society, that which is apparent is the existence of an eminent moral and ethical human characteristic responsible for the appropriate preparation of a legislation founded in ethics and morality. This is not always the case, due to the secular public overtones and the predominantly secular political sphere. Notwithstanding, repeatedly throughout history, these two categories of ethics and morality have made a huge beneficial impact driving forward the positive societal development in many segments of society.

> Even if religion cannot tell us anything about what the specific moral rules ought to be, is it necessary in order to secure observance of the moral code?…Still, the belief in an all-knowing and all-judging God remains a tremendous force in ethical conduct today. (Hazlitt 1994, 352-353).

We may underscore the substantial impact that these two categories - morality and ethics - have played in shaping societies in general and political relations in particular. It is morality that digs deep inside a man's personality or inside a person's heart, for his or her benefit in general. The morality in politics or the concept of moral politics has the potential to pervade the political scene and to become an indispensable factor in profiling the political life in contemporary societies. 

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ABORTION IN POLAND: A QUESTION OF INDIVIDUAL RESPONSIBILITY AND ETHICS

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INTRODUCTION

Is abortion a fundamental right? While some argue that it is other argue that it is not. From Article 3 "Everyone has the right to life, liberty and security of person." (UN General Assembly 1948) by the UN Universal Declaration of Human Rights, it is given the freedom of choice therefore women themselves should be able to make this decision. Today in around 1/3 of all the countries in the world abortion is legal and upon request, 2/3 is legal if it is based on socioeconomic grounds or to preserve health, and 1/3 it is only legal when the women's life is in danger or prohibited altogether.

In Eastern Europe the only country that has not have legalized abortion based upon request is Poland. Today in Poland abortion is only legal if there is fetal impairment, incest or rape. This year in October the ruling right-wing party PiS (Law and Justice) proposed ban of abortion under any circumstances this resulted to massive protests across Poland where hundreds of thousands of women dressed in black took over the streets expressing their anger for this bill.

The protests were a success. Just a couple of days after the bill was proposed, PiS members themselves threw out the legislation, and after couple more days the Parliament threw out the legislation fully. Although the proposition was by a group of citizens, PiS was the one who carried out the proposal. To understand better the whole issue of abortion, we have to take a look back to 1989 when socialism fell.

THE FALL OF SOCIALISM AND ITS AFFECT ON WOMEN RIGHTS

With the fall of socialism in 1989, a big crisis occurred in the health care division especially towards women. Poland adopted the agenda of the Catholic Church, its health policies, reproduction and sexuality were guided based upon moral via the Conscience Clause law (Sumenia 2009, 161-183), which allows health providers to refuse health

assistance citing this law, which shortly followed by the ban of abortion which was passed without a referendum. This withholds the freedom and option of Planned Parenthood. This raised rage in citizens that started protests. After this the state balanced this legislation allowing abortion to be proceed under some circumstances such as: fetal impairment, incest or rape. This did not only raise concerns of the place and the future of the rights of women in post socialism, but also the limits of liberal democracy.

Before the fall of socialism, women's reproduction and sexuality were autonomous. In 1956 abortion was legalized for pregnancies up to 14 weeks and was free of charge in public hospitals, 97 percent of all abortions between the periods of 1956 and 1989 were based upon social grounds. (Niemec 1997, 167). At the same time the Polish state was restraining the involvement of the Catholic Church. Later to keep peace between the state and the church a *modus vivendi* (working agreement) was signed. There was an evident disagreement between the state and the church on the reproduction policies. With the fall of socialism the church took this opportunity to undergo the act of banning abortion, and made significant changes in the reproduction policies.

CONSCIENCE CLAUSE LAW

Written in 1991 by the Medical Code of Ethics saying that "a physician can withhold healthcare services which are not in agreement with his conscience" (Polish Code of Ethics 1991, 205) This "conscience clause" is a big concern. Medical personnel on the other hand must send the patient elsewhere where there are "realistic possibilities of obtaining such health-care" (Nesterowicz 2001, 340). Local women's groups have reported that such referrals are very often not made.

From recent time the "conscience clause" has been gaining ground, in May 2014 around 3000 people, whom mainly were medical officials, singed a "Declaration of Faith". This declaration states that "the human body is sacred and is inviolable from conception to natural death and begins with the words: "I believe in one God, the Lord of the Universe, who created males and females in his own image (…) If such man chooses to violate the basic beliefs of the 10 commandments by committing acts such as abortion, artificial inception, euthanasia or using contraception, then they reject the Creator himself". (Deklaracija Wiary 2014, 1). This act was very low accepted by the mass public.

More than 52 percent of Poles believe that a doctor cannot, calling upon his/her conscience refuse to perform an abortion in a situation where it is legally allowed, while 62 percent responded that a doctor cannot even refuse to issue a referral for abortion when a women according to the law qualifies for such service. 55 percent of the correspondents that doctors should not refuse to prescribe contraceptives if there is no medical danger.

THE CATHOLIC CHURCH INTERFERENCE WITHPLANNED PARENTHOOD

In Poland there is a significant lack of sexual education to women and young adults in global. The reason for it might be the interference of the Catholic Church in the State's policies. The Church sees it as sins, they are strongly against using contraception, sex for non-reproductive purpose is also considered as sinful. In an interview with a doctor working at the Malopolska Pro-Family Health Clinic, she strongly opposes any use of

contraceptive pills or injections especially the hormonal ones. Many gynecologists have refused to prescribe contraceptives to patients because it is not in their beliefs. It is clear how much the Polish Church has power over certain institutions in the state.

Through power the church is trying in a barbarian way to influence the most private freedom. Having to force a women to carry out the pregnancy, even if that pregnancy is a result of rape. This is a serious problem that Poland has, mixing the church and the state which has resulted to problems such as this. Having doctors make decision instead of the patients themselves. Denying the right of freedom and making decisions on their own, doctors have the power of forming and shaping the patient life and future which should not be the case.

ECONOMICAL AND POLITICAL IMPACT ON PLANNED PARENTHOOD

To understand better the reason for restricted Planned Parenthood in Poland, we have to understand the economics of Poland as a post socialism country. In the late 1940's and 1950's Central and Eastern Europe went through a rapid industrialization. Women in Poland encountered a decrease in financial resources which were a result of the neoliberal transformations, because of the harsh reductions in maternity and social service provisions since 1989. (Domanski 2002, 477). This was not just the case in Poland it was all over Eastern Europe, but Poland suffered the greatest. Women had to enter the labor market, not just because of ideology but also because of wages, the income of one person in the household was not enough to support the whole family. By entering the labor market there was evident gender inequality. Although in theory men and women were equal in the socialist society, but in practice there was a male dominance and high level of inequality. As there was shortage of men to work in that period, women had to take jobs typically reserved for men (which were better paid) although women were paid much less than men. When there were enough men to fill the jobs women were let go of the previous jobs, and were expected to go back to their previous jobs as housewives.

Politically the state shared the propaganda of the perfect socialist women, which contained hard working and a devoted mother, wife and employee. The state gave a very short maternity leave, they were expecting mothers to leave their children in state institutions where their children will be taken care of. Women found it very hard to balance both work and family.

In the early 1960's and 1970's the Polish state advocated couples to form smaller families. When the fertility rate started decreasing the state started offering longer maternity leave, higher family allowances in hope to raise the fertility rate.

ABORTION UNDERGROUND

With the ban of abortion and the conscience clause many doctors who preformed abortion in public hospitals started performing abortion illegally in private offices. Scheduling an appointment to get an abortion is quite easy, since they often advertise themselves in newspapers. Although they are widely publicized, until recent times authorities almost never investigate cases such as these. Although they are advertised in local and national newspapers both doctors and patients are not willing to give out any information, unless something goes wrong, which happens rarely. In 2008 the minister of

health Ewa Kopacz proposed legislative action to monitor pregnancies in Poland, to ensure that the pregnancies are brought to term, this was said to be done to control the underground abortion. There is a significant increase of doctors who are performing illegal abortion in Poland. Women who are refused to be given abortion have to seek this kind of help. This is one more negative side of banning abortion, by doing so women are forced to do it illegally or even travel in other countries. But it is still a problem to many who cannot afford to pay to get an abortion. There is also a difference in prices, for example doctors in smaller cities charge less than those in bigger.

Women with this are put through great danger having to travel to other cities and perform abortion illegally. Living with the fear of getting caught by the government officials, or something to go wrong during the procedure. They are often sold fake pills for high prices that do not give the wanted results.

CONCLUSION

After the fall of socialism in 1989, one of the first issues raised by the Catholic Church was the case of abortion and contraception. By today there was twice an attempt to ban abortion fully. First in 2007 by the request of the Catholic League of Polish Families party which notion was rejected by the Parliament and in 2016 when the ruling party PiS set the notion to ban abortion that was later rejected by most of the party members and the Parliament as well. Although significance was the mass protests that were sparked with the latest decision when tens of thousands of women dressed in black went on the streets to protests against the ban of abortion.

Nonetheless, since the fall of the regime the church interfered with state policies-acting as a *de facto* para-state. Showing clearly the ways in which post socialist state and religious form of institutional power had influenced women rights, putting under questioning the Polish democratization. The politics of reproduction in Poland are significant because not only do they have an impact on women's health and body autonomy but also the women's position in society.

From this research it is evident that the Church has big influence over the policies of the State, the Conscience Clause is used as a toll to expand centralized power by implementing subtle forms of regulations which makes the power seem less visible and is spread widely across the country. Even though the politics in Poland according to the West is categorized as a "successful democracy" there are cases where the flaws and problems can be seen, particularly in the field of reproduction and Planned Parenthood. Mixing state and church as one body leads to many problems, contradictions and prevailing. Therefore, the Polish state must start distinguishing the church from the state. 

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